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ABSTRACT

Designed to assist public institutions in meeting the many requirements and deadlines of the Americans with Disabilities Act (ADA) of 1990, this handbook provides a blueprint for coordinating ADA compliance and conducting the required self-evaluations. Chapter 1 reviews policy implications of compliance with the ADA, discusses the importance of the legislation to institutions, and provides sample policy statements. Chapter 2 provides an overview of requirements and deadlines for compliance for ADA Titles I, II, and III, while chapter 3 describes the first phase of conducting ADA self-evaluations, including the creation of an ADA task force, gathering input from the community and institution, the role of ADA Coordinators, and the audit process. Chapter 4 discusses the second phase of ADA evaluations, which includes setting priorities and developing a transition plan, and reviews the differences between program and facilities access; structural renovations planning; and completing the self-evaluation. Chapter 5 describes the final phase--ensuring compliance and related budget considerations. Chapter 6 describes the process of conducting an employment audit, chapter 7 discusses audits of programs and services other than employment, and chapter 8 highlights the features of facilities audits. Chapters 6 through 8 provide sample audits, forms, and/or worksheets for each type of audit discussed. Finally, chapter 9 presents a sample transition plan. (MAB)

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AUDIT, TRANSITION PLAN, AND POLICY STATEMENT FOR HIGHER EDUCATION

MANUAL AND WORKBOOK

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Association of Community College Trustees

American Association Of Community Colleges

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ADA

AUDIT, TRANSITION PLAN, AND POLICY STATEMENT FOR HIGHER EDUCATION

MANUAL AND WORKBOOK

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ACCT and AACC suggest that if you have any questions concerning the material contained in this publication or concerning ADA compliance that you direct all questions to Ira Michael Shepard and Robert L. Duston at (202) 333-8800 or write them at the law firm address, Schmeltzer, Aptaker & Shepard, P.C., 2600 Virginia Avenue, NW, Suite 1000, Washington, DC 20037-1905.

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INTRODUCTION

The many requirements of the Americans with Disabilities Act (ADA) include several specific rules and deadlines for public colleges and universities and other public entities:

- Each public institution must conduct a comprehensive audit/self-evaluation of all programs and services before January 26, 1992.
- Each public institution must appoint an ADA coordinator.
- If programs can only be made accessible through structural renovations, a "transition plan" for making those renovations must be prepared. Construction must be completed before January 26, 1995.
- The self-evaluation and transition plan must be in writing, with an opportunity for public comment, and must be available to the public for three years.
- Each institution must develop and publicize a grievance procedure for ADA complaints that can be used by any person.
- Each institution must make all of its programs and services accessible to persons with disabilities.

There are no specific guidelines in the statute or regulations regarding how these requirements are to be accomplished. This *Manual and Workbook* is a blueprint for coordinating ADA compliance and conducting the self-evaluation.

There is no single format or method of self-evaluation recommended by the Department of Justice (DOJ) or the Department of Education (DOEd). While DOEd provided guidance in 1977 on preparation of a Section 504 Self-Evaluation, much of which is applicable to the ADA, the DOEd acknowledged that its guidance was merely one approach.

DOEd and DOJ representatives have explained in the ADA Technical Assistance Manual and in informal advice what is unacceptable in an ADA self-evaluation.

An ADA audit cannot:

- Focus solely on physical barriers and omit communication barriers
- Focus solely on students and not other beneficiaries of college programs and services
- Omit employment issues
- Evaluate support staff employment and not faculty issues

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- Address academic issues and not barriers to other student services
- Deal solely with main campus programs and ignore off-campus programs

Aside from these basic rules and the requirements outlined elsewhere in this publication, there are no other rules for the self-evaluation. All of the suggestions, guidance, and checklists in this *Manual and Workbook* are the authors' opinion of what is the most effective approach to achieve compliance. This approach has been developed through experience with Section 504, the input of those who conducted Section 504 self-evaluations in 1977-78, the comments of hundreds of individuals during ADA training, and work with the various agencies. Each institution, however, will have to evaluate these recommendations and tailor the process based upon its size, progress to date, resources, degree of access and compliance with Section 504, diversity, and other factors.

The ADA will have a dramatic impact on all aspects of higher education. The ADA is like sexual harassment--the issues will be present for many years. The best place to start compliance efforts is with a comprehensive self-evaluation. It is hoped that this *Manual and Workbook* will make this process more efficient and ultimately will save institutions from unnecessary expenditures and litigation.

How To Use This Manual

Chapters 1 and 2 contain Executive Summaries of the key substantive requirements of the ADA. Chapter 1 focuses on policy issues for the trustees and regents--why ADA needs to be a significant priority and the need for support from senior administrators. Chapter 2 outlines substantive requirements and key deadlines. Chapter 2 concludes with a list of publications that provide more detail to those charged with implementing ADA compliance.

Chapters 3, 4, and 5 guide institutions step by step through the self-evaluation process. We recommend a three-phase approach. Chapter 3 describes the formation and make-up of the Task Force and the initial "Phase I" audit/survey of facilities, programs, and services. Chapters 4 and 5 then detail the process for the critical "Phase II"--analyzing what is--and is not--required, with recommendations on setting priorities and formulating budgets. Chapter 5 ends with a discussion of "Phase III"--monitoring compliance.

Chapters 6-8 provide the crucial tools for data collection--sample checklists and forms, as well as enough detail regarding the ADA's requirements for the Task Force to understand the purpose behind the questions. Chapter 9 is a sample transition plan for public colleges.

CHAPTER 1

POLICY IMPLICATIONS OF ADA COMPLIANCE

It is unlikely that any college or university trustee, regent, president, chancellor, or other senior administrator is unaware of the passage of the Americans with Disabilities Act (ADA). The national publicity surrounding both the passage and recent effective dates of the ADA is greater than any federal civil rights law since 1964. This widespread awareness of the ADA has not always resulted in making ADA compliance an institutional priority. One common misconception is that the ADA will have little effect on higher education institutions that have been subject to Section 503 or 504 of the Rehabilitation Act of 1973. Any institution that believes this to be true, and is taking few steps to respond to the ADA, will be in for a rude surprise if the institution is sued. There are significant differences between the ADA and Section 504, and many institutions have fallen short of Section 504's requirements.

The passage of the Americans with Disabilities Act on July 26, 1990, was viewed by persons with disabilities as their personal civil rights law.[1] Advocates claim that at least 43 million individuals in the United States have one or more disabilities. It was Congress's intent to effect sweeping changes in the attitudes and practices of American businesses and state and local government agencies. The ADA takes a multi-step approach to removing barriers to employment and services for persons with disabilities, including:

- Prohibitions on employment practices that are designed to decrease the high rate of unemployment among persons with disabilities and to remove qualified individuals from welfare rolls

- Requirements for accessibility of goods and services that will bring persons with disabilities into the marketplace

- Requirements on transportation that will make it easier for persons with various disabilities to get to and from jobs, schools, stores, public facilities, and services

- Changes in telephone communication to remove barriers for persons with hearing impairments

- Requirements for access in new construction and alterations that, over time, will result in an increasingly barrier-free environment

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[1] A note on terminology: Congress incorporated into the ADA the phrase "persons (or individuals) with disabilities" as the term preferred by the protected class. The term "handicapped" is considered objectionable by many persons with disabilities due to stereotypes and the patronizing linguistic origins of the term, as are terms such as "wheelchair-bound." "Disabled persons" is also less favored because it emphasizes disability instead of "person." Some persons with disabilities may view an institution's use of language as an indication of the institution's approach to the ADA.

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The broad reach of the ADA is seen in the multitude of agencies who have regulatory responsibilities under the ADA, including the U.S. Department of Justice (DOJ), the U.S. Department of Education (DOEd), the Equal Employment Opportunity Commission (EEOC), the Department of Health and Human Services (HHS), the Federal Communications Commission (FCC), and the U.S. Department of Transportation (DOT).

Higher education faces a multitude of difficult issues—budget cuts, sexual harrassment, racial tensions, and many others. This chapter seeks to answer the question, "Why should the ADA be a priority and where does it fit in?" Chapter 1.1 discusses the policy and liability implications of the ADA. Chapter 1.2 outlines the reasons why ADA compliance must be an institutionwide matter. The chapter concludes with draft policy statements for use by trustees and regents.

1.1 WHY COLLEGES SHOULD CARE ABOUT ADA COMPLIANCE

ADA compliance needs to be an institutional priority of all colleges and universities as a matter of practical economics. ADA compliance--making access to education a priority--is also consistent with the mission and purpose of community colleges and four-year colleges and universities. This chapter summarizes the policy reasons why the ADA should be a priority and given as much or more attention as issues such as sexual harassment.

Obligation to the Community

Community colleges have long recognized their obligations to their local communities to make higher education accessible to persons from all walks of life, and their mission statements reflect these beliefs. Many four-year colleges and universities have modified their mission statements along similar lines. The role of colleges in providing access to education is evident in the establishment of extension and off-campus programs, affirmative action programs for minorities, curriculum diversity, and outreach to older students, foreign-born students, working students, commuter students, and others. Access to higher education has also focused on access to the economically disadvantaged.

Many colleges and universities, prompted by the Rehabilitation Act, included the term "handicapped" as part of their non-discrimination and institutional outreach efforts. Far fewer institutions, however, have gone beyond aspirational statements to incorporate the literal meaning of "access" into all services. For example, how many colleges:

- Make sporting events and fine and performing arts physically accessible to persons with mobility impairments in equal seating, without segregation from friends; eliminate communication barriers; and make these events accessible to persons with hearing impairments through the use of interpreters or assistive listening devices?

- Are prepared to provide all written materials (from a commencement program to copies of research reports distributed to the public) in alternative formats (e.g., braille, tape, disk) to persons with visual disabilities?

- Provide employment opportunities, extra training, and modifications in tests for employment or advancement to individuals with learning disabilities?

- Ensure non-discrimination by all clubs and organizations that receive sponsorship or recognition by the institution?

Institutions dedicated to improving "access" to higher education should place the same emphasis on physical barriers, communication barriers, and attitudinal barriers toward persons with disabilities as they do on other types of barriers, such as economic barriers.

Access as a National Priority

The ADA is intended to make access to higher education for persons with disabilities a national

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priority. All public colleges and universities are covered under Title II of the ADA. All private institutions of higher education are covered under Title III as places of public accommodation. The expressed intent of Congress was to ensure that higher education was accessible to all individuals with disabilities regardless of size, non-profit status, or receipt of federal or public funds. Any gaps in the coverage of the Rehabilitation Act of 1973 not filled by the Civil Rights Restoration Act of 1987 were eliminated in the ADA.

The passage of the ADA is a recognition of the commitment of the federal government to access as a priority. The broad bipartisan support behind the ADA, and the enforcement efforts of the agencies, ensure that the ADA will not be merely a symbolic law.

Role as a Community Leader

For many different reasons, colleges and universities are often viewed as leaders in the community. With this respect comes a responsibility to take a leadership role. Many disability advocates have long recognized that colleges and universities are the places where community values are developed or refined and where future generations may form their impressions regarding treatment of persons with disabilities. Some advocates focus on the critical role of institutions in training teachers of students of disabilities. Just as women and minorities pushed for changes in institutional awareness, forcing institutions to be leaders in diversity and non-discrimination on the basis of race, sex, and religion, many advocates want to see higher education take the same lead on disability.

Colleges as a Target

The role of higher education institutions as community leaders also makes them targets for litigation. Some disability advocates have publicly expressed frustration at the lack of compliance with the Rehabilitation Act by higher education institutions. The ADA is viewed by these groups as a powerful new tool. There will be many test cases and attempts to make examples out of employers and businesses. Some advocates have openly said they intend to aggressively file complaints against or sue colleges and universities who fail to comply with the ADA to make them into examples.

Heightened Awareness by Students (and Parents) of Their Rights

A new type of student is entering postsecondary education--students with disabilities who grew up with the protections of various federal laws (such as the Education of All Handicapped Children Act) and whose parents have learned how to use the legal system to ensure that all legally required opportunities are available to their children. The impact of this change can be seen in the increase in litigation under the Rehabilitation Act during the last four years.

Increased Risk of Litigation

The Rehabilitation Act was seen by many persons with disabilities as an inefficient tool because of the substantial confusion over its coverage and remedies. There is no such confusion under the ADA, which provides for:

- A private right of action by job applicants, employees, students, and any member of the public that is denied access to the services of a college;

- Plaintiff's attorneys' fees. Successful employees and private litigants enforcing the public accommodations and program access provisions can recover their attorneys' fees and costs;

- Limited or no need for exhaustion of administrative remedies. Students and members of the public can sue without filing a complaint with the DOJ or DOEd. Rejected applicants and employees must file charges with the EEOC but will usually be able to obtain permission to sue on an expedited basis if they do not wish to wait for an EEOC investigation.

The EEOC has estimated that *10,000 to 12,000 disability discrimination charges* will be filed between July 26, 1992 and July 26, 1993. During the first six months after Titles II and III went into effect (January 26, 1992), almost 1,000 complaints were filed with the DOJ.

Damages and Penalties

- Successful applicants or employees can recover up to $300,000 in compensatory and punitive damages under Title II in addition to back pay, reinstatement, injunctive relief, and attorneys' fees. Moreover, there are several proposals pending in Congress to lift this cap. Employees of public institutions may be entitled to unlimited monetary damages under Title II.

- If the Department of Justice acts on a Title III complaint, the civil penalties are up to $50,000 for a first violation and $100,000 for a second violation. Public entities are subject to injunctive relief, make- whole remedies, and attorneys' fees.

- Recent interpretations of Section 504 of the Rehabilitation Act of 1973 have dramatically expanded the remedies available to include unlimited, uncapped compensatory damages, including damages for emotional distress, in suits by employees, students, visitors and others. Section 504 claims will be routinely added to ADA claims to obtain these damages, which are greater than those available under the ADA. Plaintiffs will argue that the same remedies are available in ADA Title II suits, through incorporation of Section 504 remedies.

Jury Trials

All plaintiffs in ADA employment cases will be able to have their cases decided by a jury instead of a judge. While it is unclear whether juries are available in claims under Title II or III by students, students will argue that juries should decide their pending 504 claims based upon recent decisions.

Because This Law Will Be Enforced

The ADA is rejuvenating some agencies and giving strong new powers to others. The EEOC will take a lead in enforcing the ADA's employment provisions. The current chairman of the EEOC uses a wheelchair, and several senior EEOC staff attorneys have disabilities. This agency takes its enforcement efforts seriously. The Office of Civil Rights of the U.S. Department of Justice will be coordinating compliance nationwide with local U.S. attorneys and with the Department of Education. Congress and organizations such as the President's Commission on Employment of Persons with Disabilities and the National Council on Disability are regularly monitoring enforcement and compliance efforts. The Clinton Adminsitration supports strong enforcement of the ADA and expanded remedies.

Heightened Awareness of Other Disability Laws

Many advocacy organizations are training their members and other interested individuals to use their rights under the ADA and other laws, such as state laws, that provide even greater damages than the ADA. The ADA has also drawn increased attention to Section 504 of the Rehabilitation Act, which coincidentally has been recently interpreted by some courts as providing damages that are greater than the ADA.

Effect on Institutional Resources

Institutions of higher education will have to spend money to comply with the ADA, including money to conduct self- evaluations, reasonable accommodations to employees, auxiliary aids and services to remove communication barriers, and make structural changes to provide program accessibility. The ADA will also affect budgets for capital improvements as a result of the new construction and alterations provisions. There are dozens of possible costs under the ADA, including the costs of litigation and damages. Appropriate resources must be budgeted and allocated in a way that can provide the greatest accessibility with limited resources.

Compliance Can Save Money

By providing appropriate accommodations, institutions can avoid expensive litigation costs. In new construction and alterations, it will usually be cheaper to incorporate accessibility features than to retrofit facilities at a later date if they are found to be non-compliant. Making compliance a priority, and exercising good faith in allocating institutional resources, are the best possible defenses to an ADA claim.

Heightened Public Awareness Means the ADA Cannot Be Ignored

The ADA has been and will continue to be a highly visible, well-publicized law. Colleges and universities are already seeing an increase in disabled applicants and students demanding accommodations and an increased number of job applicants and employees with disabilities asserting their rights.

The ADA is not going to go away. Nearly 30 years after its passage, the Civil Rights Act of 1964 continues to have an increasing impact on college personnel practices, now being used in the areas of sexual harassment, pattern and practice discrimination, and challenges to glass ceilings. All of the issues that have arisen in the past 25 years under Title VII will be seen in the next five to 10 years under the ADA.

The availability of compensatory and punitive damages is not unique to the ADA; these damages and jury trials are now available in race, sex, national origin, and other employment discrimination cases under Title VII and in sexual harassment cases under Title IX. The dramatic change in potential liability should prompt every institution to make EEO awareness a priority. The ADA needs to be at the top of the priority list. First, no other EEO issue (except for sexual harassment) effects all students and benficiaries as well as employees. Second, most institutions have farther to go in raising awareness of disability issues than with other EEO issues. Third, the Department of Justice says there is no sovereign immunity under the ADA--making ADA more important for many public institutions than other liability issues.

1.2 MAKING ADA COMPLIANCE AN INSTITUTIONAL POLICY

The Americans with Disabilities Act will affect every department and operation of every college and university. The operations, services, and individuals affected include:

- Human resources and personnel officers who handle employment and employee benefits issues
- Every department and program head or other individual involved in interviewing applicants for employment
- Every supervisor or manager who has a role in recommending or executing decisions on hiring, training, discipline, or discharge of employees
- All faculty members involved in hiring faculty or making tenure decisions
- Every faculty member (including full-time, part-time, and adjunct faculty) who may have to respond to requests for accommodations involving students
- Admissions offices who apply academic criteria to students with disabilities
- Every department that may have to address requests for accommodations by students with disabilities
- Every department or program that offers services to the general public that may have to arrange for accommodations
- The individuals responsible for overseeing activities of clubs and organizations
- Physical plant administrators involved in design, construction, alteration, or maintenance of facilities
- Development offices or foundations that handle endowments or investment in commercial property
- The athletic department, fine and performing arts departments, and every department that coordinates games, shows, performances, lectures, or programs for the public
- In-house or outside counsel who need to advise the institution on ADA complaints
- Every individual involved in the leasing of space by the institution in which to run programs or the leasing out of campus space to other vendors (e.g., banks or cafeterias)

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- Business and financial officers who must budget for compliance or certify costs as an undue burden
- Affirmative action/EEO officers or disabled student coordinators who will be the focal point of student complaints
- Top administrators who need to know enough to coordinate and delegate compliance

No one department or person can handle institutionwide compliance. Nor will any single person, other than the president or chancellor, usually have the authority to do what may be required to ensure institutional compliance with the ADA.

ADA compliance will only be achieved if it becomes an institutional priority with support and encouragement from the trustees or regents and with direction, coordination, and support from senior administrators. It will ultimately be the president or chancellor who will have to decide such issues as budget allocations and settlements. They should be the ones initiating and directing the process, not the last ones to be consulted.

1.3 SAMPLE POLICY STATEMENTS

The following sample policy statements could be used by the board of trustees, board of regents, presidents, or chancellors to establish institutional priorities. These policy statements provide several alternative approaches. They should be modified to fit each individual institution.

General Policy Statement Alternative No. 1:

Policy on Compliance with the ADA

WHEREAS, Congress has enacted the Americans with Disabilities Act; and

WHEREAS, the Board of Trustees of ____________ College intends to comply with the requirements of the Americans with Disabilities Act; and

WHEREAS, providing access to education for persons with disabilities is part of the mission of this institution;

THEREFORE, it is hereby resolved by the Board of Trustees that compliance with the Americans with Disabilities Act is a priority of this institution. The Board of Trustees hereby directs the administration to prepare, publish, and distribute policy statements and procedures to comply with the letter and spirit of the Americans with Disabilities Act and to take prompt action to implement the requirements of the Americans with Disabilities Act. Policy statements shall be issued and procedures implemented covering the following areas:

(1) Appointment of at least one individual with sufficient powers, authority, and staffing to oversee compliance with the Americans with Disabilities Act

(2) Preparation of a comprehensive self-evaluation of all programs and activities of the institution, including employment

(3) Appointment of a Task Force to assist the ADA Coordinator in his or her functions, in preparation of the self-evaluation, and implementation of a plan of compliance

(4) Preparation of an institutional budget for the activities of the ADA Coordinator, the self-evaluation, and provision of reasonable accommodation or auxiliary aids and services

(5) Other steps deemed necessary by the administration to comply with the Americans with Disabilities Act, unless these pose an undue burden or would result in a fundamental alteration of programs of the institution

Further, the administration shall solicit the involvement of the community and individuals with disabilities in conducting the self-evaluation and in setting priorities for compliance.

The administration shall report to the Board of Trustees no less frequently than every three months during 1992 and 1993 on the progress being made towards compliance with the Americans with Disabilities Act.

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General Policy Statement Alternative No. 2:

Policy on the Priority of ADA Compliance

WHEREAS, Congress has enacted the Americans with Disabilities Act; and

WHEREAS, the Board of Trustees of ____________________ College intends to comply with the requirements of that Act; and

WHEREAS, the Board of Trustees is committed to compliance with both the letter and the spirit of the Americans with Disabilities Act as well as the Rehabilitation Act of 1973 and other laws protecting the rights of persons with disabilities; and

WHEREAS, the Board of Trustees is committed to providing opportunities to qualified persons with disabilities in employment and in access to education, where this will not pose an undue burden or fundamentally alter the programs of the institution; and

WHEREAS, compliance with the ADA requires raising the awareness of all employees of the institution and a commitment of institutional resources.

NOW THEREFORE, the Board of Trustees directs the administration to make compliance with the Americans with Disabilities Act a priority of the institution and to take appropriate steps to meet the deadlines established by Congress. In preparing its plan for compliance, the Board of Trustees directs the administration to take the following steps:

(1) implement procedures for raising awareness of the requirements of the ADA at all levels of the institution, including senior administrators, faculty, and supervisors. Because of the importance of compliance with the ADA and other Equal Employment Opportunity laws, the administration should direct employees to attend workshops where the administration deems it necessary;

(2) take steps to coordinate responses to requests from individuals with disabilities and respond to those requests in a timely fashion. The administration should create at least one staff position reporting to the ADA Coordinator to coordinate campuswide compliance, process requests, and respond to greivances; and

(3) create a Task Force to support the efforts of the ADA Coordinator and ensure prompt preparation of a self-evaluation. It is strongly urged that senior administration officials participate in or be familiar with the activities of the ADA Task Force.

The members of the Board of Trustees hereby resolve to work with the administration in an effort to raise awareness of the ADA with the appropriate state legislative bodies and to secure the resources necessary to comply with the ADA.

The Board of Trustees recognizes that compliance with the ADA may require rearranging certain priorities of the institution. It is our intent that compliance with the letter of the ADA shall be a high priority of the institution and appropriate changes be made and accommodation provided to qualified individuals with disabilities, unless this poses an undue burden on the institution's resources or would fundamentally alter the nature of a program. Other desirable projects may, of necessity, have to be deferred. The administration is requested to take this policy statement and the ADA's requirements into account in preparing its budgetary proposals.

General Policy Statement Alternative No. 3: Double Coordinator Approach

Policy on Procedures to Comply with the Americans with Disabilities Act

WHEREAS, Congress has enacted the Americans with Disabilities Act; and
WHEREAS, the Board of Trustess of ____________ College intends to comply with the requirements of that Act;
NOW, THEREFORE, the Board of Trustees adopts the following policy:

(1) The Vice President of ______________ and the Vice President of ______________ [insert level of and title of administrators, e.g., Administration, Finance, Human Resources] are hereby designated as the new ADA Coordinators for the institution. The Vice President of ____________ shall have responsibility for compliance with the ADA in all academic areas, student services, services to the public, extension activities, transportation, facilities, and all other non-employment programs and services. The Vice President of ______________ shall have responsibility for compliance with Title I and Title II of the Americans with Disabilities Act for all employees, including adminstrative support, temporary employees, faculty, and student employees.

(2) The administration is directed to establish a Task Force, to be jointly chaired by the ADA Coordinators, to oversee the conduct of a comprehensive self-evaluation. The ADA Task Force shall be a standing committee to monitor the institution's compliance with the Americans with Disabilities Act, to ensure completion of all items on the Transition plan, and to periodically advise the ADA Coordinators. The Task Force should include the following individuals or their designees: [insert appropriate titles of adminstrators, e.g.,]

a) VP Personnel
b) VP Finance
c) VP Student Affairs
d) VP Academic Affairs
e) Dean of Faculty
f) Affirmative Action/EEO
g) VP Physical Plant Director
h) Director of Disabled Student Services
i) Legal Counsel

(3) Both ADA Coordinators shall be provided with appropriate support staff through 1993 to handle preparation of the self-evaluation and monitoring of compliance. The administration shall periodically review staffing and budgetary requirements of the ADA Coordinators and ensure that appropriate staff and resources are available for coordinating and responding to requests for accommodation from employees, students, and the public and investigating and responding to complaints.

(4) The ADA Coordinator shall, in consultation with the Task Force, develop a grievance procedure, conduct a comprehensive self-evaluation, and develop both the self-evaluation report and transition plan required by the ADA.

In establishing its priorities and identifying problems, the Task Force shall place as much emphasis on communication barriers as on facilities barriers.

(5) The ADA Coordinators shall develop and implement procedures for responding to requests for accommodations from employees, students, and visitors. Written policies and mandatory procedures and forms shall be developed and distributed to all employees regarding response to requests for accommodations. The procedures shall specify that they are mandatory and must be followed in every case where a request for accommodations is made. The procedures shall also specify that every individual making a request for an accommodation under the ADA shall be promptly informed that the request will be considered and advised of the name and telephone number of the relevant ADA Coordinator.

(6) The ADA Coordinators, in consultation with members of the Task Force, shall devise a program for training supervisors, faculty, and the administration on the importance of the ADA and general Equal Employment Opportunity issues.

(7) The ADA Coordinators shall, with the input of the Task Force, prepare a budget for ADA compliance after completion of the self-evaluation. All costs associated with ADA compliance shall be handled through a single budget for the institution.

(8) The President shall issue a policy statement on ADA compliance to ensure the cooperation of faculty and supervisors in preparation of the self-evaluation implementing compliance. The President shall also implement a policy, in conjunction with the ADA Coordinators, regarding harassment of or denial of accommodations to individuals with disabilities. That policy statement shall be no less stringent than policies regarding race or sexual harassment.

CHAPTER 2

ADA TITLE I, II, AND III OVERVIEW

Title II of the Americans with Disabilities Act requires that all public entities, including all public colleges and universities, conduct ADA audits and self-evaluations of every activity, program, or service operated or sponsored by the institution, including employment, academic services and criteria, student services, and every facility. While the statutory provisions of Title II regarding public institutions are brief, the required compliance efforts are significant and impose extensive obligations on the part of each college and university covered by the act.

This chapter discusses the obligations that Title II imposes upon public colleges and universities and the deadlines for these obligations, and the similar obligations of private institutions under Title III. Chapter 2.1 sets forth the basic requirements under Title I, II, and III that every college and university administrator needs to know about the ADA, including, but not limited to, whom the law applies to, who is protected by the ADA, and what institutions are required to do. Chapter 2.2 addresses the additional obligations that are placed upon employers under Title I that did not exist under Section 504 of the Rehabilitation Act of 1973, and other differences between the ADA and Section 504. While the ADA incorporates many concepts adopted in the Rehabilitation Act, the ADA imposes new and much more detailed requirements on many public colleges and universities. Chapter 2.3 addresses the implications that Title I and Title III of the ADA have on Title II audits, including the need to audit employment policies and procedures. Chapter 2.4 provides a checklist of some of the resources that are available regarding substantive ADA issues.

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2.1 INTRODUCTION TO THE ADA'S REQUIREMENTS AND DEADLINES FOR COMPLIANCE

Background

To Whom Does the Law Apply?

- All public entities, including all public postsecondary institutions, are covered by the ADA effective January 26, 1992. Title II of the ADA applies to all programs and activities of these institutions, including employment, regardless of whether the program or activity receives federal funds.

- The ADA's prohibitions on discrimination in employment under Title I applied to all employers (public and private) of 25 or more employees effective July 26, 1992.

- The employment provisions reach supervisors and other persons who act as "agents" of an employer, in addition to the employer. What this means is that supervisors or managers can also be sued individually if they discriminate against applicants or employees in violation of the ADA.

- All private colleges and universities are covered by Title III of the ADA, which prohibits discrimination against the disabled in "places of public accommodation" and requires the removal of structural barriers to accessibility if the removal can be easily accomplished without much difficulty or expense. There are no exceptions based upon size--every private institution of higher education is considered a "place of public accommodation."

- Religious institutions are covered under the ADA. There is a limited exception allowing religious entities to give preference in employment to members of their own religion. All other requirements are the same.

- The law also applies to every person, business, or entity that owns, leases, leases to, or operates a place of public accommodation. This law would reach both public and private higher educational institutions and the private, non-profit foundations, trusts, or endowments affiliated with public institutions that are "commercial landlords" of facilities that contain public accommodations, such as buildings that contain retail stores or restaurants, hotels, health clubs, law or medical offices, and many other types of businesses.

- Every college and university, public or private, is covered by parts of the law that establish a new federal "building code," even if no federal funds are used. This code will govern new construction and the alteration of existing facilities.

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Why Do Administrators in One Department Need to Know About the ADA's Requirements for Other Departments?

All of the ADA's requirements are interrelated. For example, human resource/personnel departments need to be involved with design to incorporate accessible work areas; existing specialists in providing aids to students may have ideas for effective communication with job applicants and employees; financial officers need to budget for employment and program accessibility; human resources, finance departments, and those responsible for program accessibility need to work closely with physical plant personnel in evaluating structural barriers and determining when structural changes are necessary.

Isn't the ADA Simply a Duplication of the Rehabilitation Act for Most Colleges and Universities?

No! The ADA imposes a number of different requirements, especially for public institutions. Here are a few of them:

- The ADA imposes new or more detailed requirements on many public colleges and universities regarding monitoring of compliance, complaint procedures, and other administrative rules, including the mandatory, new self-evaluation required of all programs and services of public institutions (including employment) that must be completed by January 26, 1993.

- It fills gaps in coverage under the Rehabilitation Act. Entities that have not received federal funds, specific programs that have not had to comply because they received no federal funds, or entities without federal contracts are now covered.[1]

- There are requirements for new construction and alterations that are different from most existing building codes and guidelines. These requirements reach all new structures, not just classrooms and offices, and all alterations.

- The ADA's employment provisions are more detailed than under Section 504. In many cases, the requirements are broader than Section 504 regarding what are essential functions of jobs, what are reasonable accommodations, and the requirements for non-discrimination in the provision of employee benefits. For example, under the ADA, employers must consider transferring newly disabled employees to other open positions. This was not required under the Rehabilitation Act.

- There are new requirements for providing auxiliary aids to enable hearing- and vision-impaired persons to participate in all activities, not just classes. There are also extensive requirements regarding providing Telecommunication Devices for the Deaf (TDDs), as well as signage.

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[1] The Rehabilitation Act of 1973 has three major sections--501 (federal employees), 503 (non-discrimination and affirmative action in employment by federal contractors), and 504 (non-discrimination in employment and program services by recipients of federal assistance). The ADA and the regulations published by EEOC and DOJ are patterned after the regulations and case law under Section 504. Section 504's program accessibility requirements are the basis for Title II requirements and are analogous to ADA's Title III public accommodations requirements.

- The impact on colleges as landlords is unique to the ADA.

The ADA does not supersede the Rehabilitation Act or state laws that provide greater protections. Higher education institutions must comply with all applicable laws.

Who Is Protected by the ADA?

Every person is covered who either has, used to have, or is treated as having a physical or mental disability, or who is associated with a person with a disability.

Persons with Disabilities

The law protects any person with a "physical or mental impairment" that "substantially limits one or more major life activity." This definition, which is taken from the Rehabilitation Act, is extremely broad. This is not just a wheelchair law. It includes:

- Persons with mobility impairments, such as those who suffer from paralysis or use wheelchairs, crutches, or walkers;
- Persons who have lost one or more limbs;
- Persons who are blind or have vision impairments;
- Persons who are deaf or are hearing-impaired;
- Persons who have mental or psychological disorders, including mental retardation or emotional and mental illness;
- Persons with learning disabilities;
- Persons with any one of hundreds of psychological disorders, including depression and post-traumatic stress syndrome;
- Persons with cosmetic disfigurements, such as burn victims; and
- Persons with one of many serious contagious and non-contagious diseases, including AIDS, AIDS-related complex, epilepsy, cancer, and tuberculosis. Persons who are HIV positive, with no other symptoms, may be covered.

What Is Not Covered?

- Eye color, hair color, height, weight (except in unusual circumstances where obesity is the result of a medical condition).

- Advanced age in and of itself is not an impairment (although hearing loss, arthritis, and Alzheimer's disease would be impairments).
- Temporary impairments, such as a broken leg, sprain, or infection that is expected to heal quickly, would not be protected. Nor would somebody with a temporary illness such as the common cold.
- Illiteracy or poverty (although inability to read because of a physical impairment or a specific learning disability is covered).
- Minor impairments that do not limit a major life activity.
- Pregnancy.

Record of Impairment

Persons with a record of an impairment are protected. This would include anybody with a history of a disability, such as individuals who have undergone psychiatric counseling or have been previously disabled, or someone who has a history of cancer that is in remission.

Regarded as Disabled

If you consider a person to be "disabled," the ADA applies and protects them, even if that person does not meet the statutory definition. This would include, for example, an individual who has an impairment that the employer erroneously perceives is substantially limiting; an individual with an impairment that is only substantially limiting because of the attitudes of others (e.g., an employer that discriminates against a burn victim because of potentially negative reactions of others); or an individual with no impairment that is erroneously regarded as having an impairment. The inclusion of coverage for persons "regarded as" disabled means that if an employer rejects an applicant because he or she has a physical or mental condition, this may be enough to bring this person within the definition of "disability."

Association

The ADA protects persons who have a known association or relationship with a disabled individual. For example, an employer cannot fire an employee or refuse to hire an applicant because he or she is dating someone with AIDS or has a parent or child with a serious illness. This is a protection not found in the Rehabilitation Act.

Alcoholics and Drug Addicts

Drug addicts or persons who have suffered from drug addiction in the past are protected, but not if they are currently using illegal drugs.

Persons suffering from alcoholism are covered, even if they are not in rehabilitation, but they can be required to conform to the same standards as other employees.

The ADA's provisions regarding drugs and alcohol are somewhat different from the Rehabilitation Act, but the Rehabilitation Act was amended to make the two laws consistent.

Employment

What Does the Law Require Employers to Do?

Title I of the ADA imposes many requirements on employers.

- Employers cannot discriminate in hiring, review, promotion, tenure, demotion, discharge, or other aspects of employment against any applicant or employee with a disability on the basis of that person's disability if the person is qualified and able to perform the "essential functions" of the job with "reasonable accommodation."

- The rules against non-discrimination require providing all disabled employees with equal or equivalent access to all benefits of the employment in an integrated setting that would be available to a similarly situated employee, unless doing so would be an "undue hardship." This could include access to cafeterias, employee lounges or smoking areas, transportation, drinking fountains, and bathrooms.

- Employers can discriminate if there is a "substantial probability" that a person's disability would pose a "significant risk" to the health and safety of others. This decision cannot be based on assumptions, stereotypes, or past experience.

- Employers cannot refuse to hire someone simply because it might cause their workers' compensation or health insurance rates to increase and, in most cases, cannot refuse to provide at least some insurance to disabled employees, if insurance is provided to other employees.

- There is an affirmative obligation to provide "reasonable accommodations" to disabled applicants or employees unless it would be an "undue hardship." Examples of reasonable accommodations include:

  - modifying facilities, entrances, or work stations to make them accessible;

  - restructuring a job to transfer "non-essential" functions that the disabled person cannot perform to other employees;

  - providing special equipment, modifying equipment, or providing qualified readers and interpreters; and

  - reassigning a current employee who becomes disabled and can no longer perform his or her job to a vacant position for which the individual is qualified. The Rehabilitation Act was not usually interpreted to require transfers as a reasonable accommodation.

- An employer that fails or refuses to reasonably accommodate an applicant or employee violates the law unless the employer can show that reasonable accommodations were considered but rejected because the accommodations were an undue hardship or the individual was not qualified.

- Specific rules on non-discrimination impose restrictions on pre-employment physicals, interview questions, reference checks, and medical screening.

- The term "undue hardship" is vaguely defined as "an action requiring significant difficulty and expense." There are no simple tests. The resources of the facility and its parent are taken into account. Thus, hardship may be based upon the institution's (or possibly the system's) budget, not the department's budget.

- The fact that an accommodation would require the employer to violate the terms of a collective bargaining agreement does not mean that it is automatically an undue hardship. This is different from most interpretations of the Rehabilitation Act. Conflict with a collective bargaining agreement is a relevant factor, but not necessarily conclusive.

- Similarly, the ADA may be interpreted to supersede state procedures or laws protecting public employees. Conflicts with other federal laws may be a defense; conflicts with state laws might not be.

- An employment questionnaire inquiring into an applicant's past disabilities is probably prohibited under the ADA unless the question is part of a medical examination made after a conditional offer of employment. Otherwise, the inquiries must relate directly to the applicant's ability to perform the essential functions of the job.

- Medical examinations and inquiries can be made after a conditional offer of employment is extended, but the results of the examination must be kept confidential and cannot be used in a way that violates the non-discrimination requirements of the ADA.

What Are Some of the Other Implications of the Employment Provisions?

- Employers should seriously consider redrafting job descriptions for every position to identify essential job functions, which is a time-consuming process. Employers must also segregate future medical information from personnel files.

- All medical exams, medical questionnaires, and drug testing programs should be reviewed. Many will have to be changed in order to comply with the ADA.

- Health benefits, life insurance, disability, leave, attendance, and other policies and benefit plans could be affected.

- Many common hiring practices, such as refusing to hire persons who have filed workers compensation claims, who are at risk for future injury, or who have a record of past drug or alcohol abuse may be affected by the ADA.

- An argument can be made that an employer that rejects a job applicant who was fired from a prior job due to alcohol-related performance problems may be violating the ADA if the applicant can show he or she is now able to do the job.

- Employers need to learn the new rules, change their policies, revise their pre-employment forms and procedures, and train their supervisors. Because of the two-year phase-in period between the ADA's enactment and its effective date, ignorance of the law may be no excuse.

Accessibility of Programs, Services, and Facilites

Every college and university will be required under the ADA to make programs, services, and facilities "accessible to" and "usable by" persons with disabilities. While the program accessibility requirements under Title II are similar to those imposed under Section 504 of the Rehabilitation Act, the ADA has more detailed requirements on communication issues. Similar requirements apply to private colleges and universities under Title III.

What Does the ADA Require Public Colleges and Universities to Do?

The following are among the obligations imposed by the ADA on all public colleges and universities under Title II (many of the same rules apply to private entities under Title III, or because they are covered under Section 504):

- Engaging in a new self-evaluation

- Providing notices concerning the ADA

- Designating responsible employee(s) to coordinate ADA compliance

- Adopting and publishing new grievance procedures to address complaints under the ADA

- Ensuring that existing facilities are readily accessible to or usable by individuals with disabilities through structural changes in facilities or using other methods that are equally effective to make services, programs, or activities accessible

- Eliminating eligibility criteria that screen out or tend to screen out individuals with disabilities or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity unless these criteria are shown to be necessary for the provision of the service, program, or activity being offered

- Administering services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities

- Taking appropriate steps to ensure that communications with applicants, participants, and members of the public who are disabled are as effective as communications with others, including the furnishing of appropriate auxiliary aids and services

Self-Evaluation—Notice and Grievance Procedures

- Self-Evaluation. The ADA requires all public entities to conduct and complete a self-evaluation before January 26, 1993 in order to evaluate current policies, procedures, and practices and to identify and correct any that are not consistent with the ADA. While this requirement is patterned after Section 504 regulations, the Department of Justice recognizes that most Section 504 self-evaluations were conducted 14 years ago, and those evaluations may not have covered all of the institution's programs and services, especially those that did not receive federal funds. All public colleges and universities must maintain their self-evaluations and make them available to the public for three years.

- Publicity. Public entities must disseminate information to applicants, participants, and beneficiaries of their rights and protections under the ADA through handbooks, manuals, and pamphlets distributed to the public, display of posters, or through other means.

- ADA Coordinator. Another requirement adopted from Section 504 is the designation of one or more employees responsible for coordination of efforts to carry out responsibilities under the ADA. The designation of this person does not eliminate the requirement that individual employees comply with the non-discrimination rules.

- Grievance Procedure. Public entities have to establish grievance procedures for resolving complaints of violations of the ADA. This procedure applies to employees, students, visitors, and other beneficiaries.

- The DOJ is taking the position that these requirements apply to all of the public entity's obligations under the ADA, including employment and new construction. If this interpretation is correct, then self-evaluations would have to encompass employment as well as program accessibility; notices would have to be posted or other means utilized to communicate non-discrimination rules to applicants and employees as well as members of the public seeking to use the services of the institution; and the institution's ADA compliance officer(s) would have to oversee all aspects of the law.

Program Accessibility and Existing Facilities

The ADA regulations are patterned after the program accessibility concept in the Section 504 regulations for programs or activities that receive federal financial assistance (e.g., 28 C.F.R. part

39). As Chapter 4 explains in more detail, public entities are not required to make each of their existing facilities accessible, unless structural renovations are the only means to provide access to programs and service. This is different from the requirements for private institutions under Title III; private institutions must remove architectural barriers where removal is readily achievable.

Title II requires public colleges and universities to make their programs accessible in all cases, except where doing so would result in either a fundamental alteration in the nature of the program or undue financial and administrative burdens. The "undue burden" standard is significantly higher than the "readily achievable" standard in Title III.

- If structural changes in facilities are necessary in order to make programs or services accessible, they must be completed no later than January 26, 1995. A transition plan identifying these facilities must have been developed and published before July 26, 1992.

- There is no transition period for non-structural changes, suggesting that they must be made promptly after the self-evaluation. Non-structural changes to make programs accessible might include redesign of equipment, reassignment of services to accessible facilities, and the provision of auxiliary aids and services.

- The determination that compliance would result in a fundamental alteration of services or an undue administrative and financial burden must be made in writing by the head of the public entity or his or her designee no lower than a department head having budgetary authority and responsibility for making spending decisions. If challenged, the decision will likely have to be defended by this person.

- All of the resources available for use in funding the service, program, or activity would be considered. Thus, the fact that a particular department, area, or program of the university does not have sufficient resources in its budget to make particular areas accessible will not be determinative; it is likely that the courts would review the resources of the entire university.

Other general prohibitions against discrimination, generally based on those in the Section 504 regulations, include:

- Requiring that services provided to persons with disabilities must be equal to those provided to others

- Stating that programs and services are conducted in the most integrated setting possible and prohibiting the exclusion or segregation of individuals with disabilities

- Requiring that non-discrimination be taken into account in selecting sites for construction of new facilities

- Applying a disparate impact standard to prohibit application of eligibility criteria that screen out or tend to screen out an individual with disability or a class of individuals with disabilities

- Prohibiting policies that unnecessarily impose requirements or burdens on individuals with disabilities that are not placed on others, such as requiring that qualified individuals with disabilities be accompanied by an attendant

Communication

The ADA is clear in its requirements regarding communications for all persons using a public entity's services, programs, or activities (including employment). The ADA suggests in several places that as much emphasis should be placed on eliminating communication barriers as physical barriers.

- Public entities must furnish appropriate auxiliary aids and services at no charge and comply with the express choice of members of the public, unless they can demonstrate that another effective means of communication exists, or that the use of the means chosen would fundamentally alter the nature of the service, program, or activity or impose undue financial or administrative burdens. Auxiliary aids and services may include:
    - providing qualified interpreters where note pads and written materials are not sufficient to permit effective communication
    - providing reading devices or readers, if necessary, to aid in reviewing public documents or filling out forms
    - providing access to television programing produced or broadcast by public entities for persons with hearing impairments (such as closed captioning)

Other sections specifically require the use of Telecommunication Devices for the Deaf (TDDs) or equally effective telecommunication systems when communicating with individuals with impaired speech or hearing. Public entities may not place a surcharge on an individual with a disability or a group of individuals to cover costs of these measures.

Public entities also must provide information and signage at all inaccessible entrances to direct persons to accessible entrances and otherwise inform the public about accessible services, activities, and facilities. All of these obligations are subject to the "fundamental alteration" and "undue burden" defenses.

What Facilities Within Private Colleges and Universities Are Considered Places of Public Accommodation?

The DOJ regulations do not explain how Title III's requirements apply on college campuses —whether their status as a "place of education" means that all facilities are covered (except for those areas used exclusively by employees) or only those facilities used for education. Classrooms, lecture halls, libraries, research labs, and similar teaching areas are clearly covered, as well as the common areas and grounds around these facilities and the parking areas. The DOJ regulations say that most corporate offices or employee areas are not "public accommodations." In higher education, however, most faculty and staff offices are visited by the "public"–students.

It is unclear whether facilities that are not strictly for teaching are automatically considered public accommodations if they are located on campus property, or only included if they are separately listed in the ADA as places of public accommodation. For example, auditoriums, theaters, gymnasiums, golf courses, hospitals, museums, book stores, cafeterias, pubs, and banks are all separately listed as places of public accommodation that, if run by either a private commercial business or a private university, are subject to Title III unless they fit within the narrowly defined "private club" exception.

The DOJ regulations contain express guidance that the public accommodation requirements (i.e., barrier removal or alternatives) do not apply to facilities used only by employees. These exceptions might include back offices, maintenance facilities, boiler plant, and other physical plant facilities, storage areas, and faculty lounges.

What Does the Law Require Private Colleges and Other Places of Public Accommodation to Do Under Title III?

The obligations imposed on "places of public accommodation" include:

- Removing physical barriers
- Providing assistance to disabled students or members of the public in order to give them access to all services offered by the university
- Eliminating discriminatory criteria on who can receive services and eliminating practices that tend to screen out or adversely affect disabled persons
- Providing special equipment or services to persons with disabilities on request, when needed to allow them to use all of the services of the college on an equal basis

Public accommodations cannot impose a surcharge on persons with disabilities to pay for the costs of compliance.

Removing Physical Barriers

All private colleges and other public accommodations must remove architectural barriers from existing facilities where it is "readily achievable" to do so, meaning that the removal is "easily accomplishable and able to be carried out without much difficulty or expense." How much difficulty or expense each institution must incur for barrier removal is a difficult question, involving many factors. There are no clear-cut guidelines.

Examples of steps to remove barriers include:

ramping steps

making curb cuts in sidewalks

adding raised markings on elevator control panels

eliminating turnstiles

lowering telephones

installing flashing alarm lights

adding braille labels to vending machines	widening doors
creating accessible parking spaces	modifying bathrooms

The DOJ takes the position that barrier removal is a continuing obligation, to be regularly re-evaluated based on changed circumstances and the availability of resources. The DOJ has stopped short of asserting there must be money allocated for barrier removal each year but may take this position in future lawsuits.

Providing Assistance or "Alternatives" to Barrier Removal

Where the removal of physical barriers is not "readily achievable," colleges and universities must make their services available through "alternative methods" if these methods are "readily achievable." Alternatives might include, for example, moving programs or services to accessible buildings.

Elimination of Discriminatory Criteria

Private colleges and universities cannot have any broad policies that prevent persons from using their facilities or services (such as a prohibition of deaf attendees at lectures) unless the policies are legitimate, defensible safety requirements. Safety requirements are narrowly defined and must be based on actual risks, not stereotypes. All public accommodations must modify policies and practices to permit the use of "service animals" by persons with disabilities (usually the vision- or hearing-impaired).

Auxiliary Aids and Services--and Alternatives

Public accommodations must make available "auxiliary aids and services" when necessary to ensure that no disabled person is treated differently or denied services, unless it would be an "undue burden"--that is, result in significant difficulty or expense--to do so. This obligation, and the standard applied, is essentially the same as that imposed on public institutions under Title II.

Colleges and Universities as Landlords

The requirements of Title III apply to every private person or entity that owns, leases, leases to, or operates a public accommodation. Many colleges and universities may overlook the fact that they or their affiliated private, non-profit foundations have new obligations as commercial landlords as a result of commercial property acquired through gifts and trusts. Even if the institution's development office has turned over responsibility to a management company, the institution may not be insulated from its liability as a landlord. Private institutions of higher education and private, non-profit foundations affiliated with public universities stand on no different footing than other landlords.

For example, if a university-affiliated foundation owns commercial office buildings, it is likely that those buildings will contain one or more places of public accommodation (e.g., restaurants, retail stores, or offices of lawyers, accountants, doctors, and insurance companies). Depending upon the terms of the lease and other factors, the "landlord" may be required under the ADA to make entrances, common areas, parking, and elevators accessible or to ensure that security guards can communicate with disabled persons. If a private university directly or indirectly owns or operates a public accommodation (such as a hotel or golf course), it has the same obligations for barrier removal and non-discrimination as any other place of public accommodation. While the management company that handles day-to-day operations is also liable under the ADA, the financial cost of removing structural barriers or providing alternatives could end up with the owner. Public institutions are not directly covered under Title III, but their tenants are covered. It is possible that public universities may be covered indirectly for the acts of their tenants under Title II.

New Construction and Alterations

What Is the Effect of the New "Building Code" Imposed by the ADA?

A little-known federal agency (the Architectural and Transportation Barriers Compliance Board or ATBCB), in cooperation with the Department of Justice, has established standards for making all buildings and facilities "accessible" to persons with disabilities. These new standards are patterned after existing model building codes, but there are significant differences. New construction and renovations by private institutions are required by the ADA to comply with these standards. It may be several years before these standards (the ADA Accessibility Guidelines or ADAAG) are incorporated into existing model building codes and local codes. Until then, colleges and universities cannot assume that their architects, engineers, and builders are familiar with and complying with these new standards.

The ATBCB has not yet published its guidelines for public entities. At present, the DOJ says that public entities (including public colleges and universities) can follow the Uniform Federal Accessibility Standards (UFAS) in 41 C.F.R. part 101-196 or the ADA Accessibility Guidelines (except for the "elevator exception" for small buildings). The DOJ's Title II Technical Assistance Manual contains guidelines on when these standards apply. All public institutions must follow one of these standards.

What Types of Projects Do the ADA Accessibility Guidelines Apply to Under Title III?

The ADA Accessibility Guidelines apply to all new construction of private "commercial facilities" and to alterations of existing commercial facilities. "Commercial facilities" include dormitories, classrooms, cafeterias, offices, recreational facilities, and maintenance facilities; essentially every building found on a private college or university.

When Do the ADA Accessibility Guidelines Take Effect for Private Colleges and Universities?

- Any physical alteration of a property that begins after January 26, 1992, must comply. This includes renovation, remodeling, rearrangement of walls, and other projects, except normal maintenance, reroofing, painting, and similar tasks. The one exception is barrier removal done to comply with the ADA.

- New construction must meet the new guidelines if:

- the last application for a building permit or permit extension is certified complete by the applicable government agency after January 26, 1992 (or in jurisdictions without certification the permit is received after that date), and

- the first certificate of occupancy is issued after January 26, 1993.

- Under these rules, if alterations are begun or building permits certified before the ADA takes effect, or if new construction can be completed and occupied within the following year, the facility does not need to comply with the accessibility guidelines.

When Do the Requirements Under UFAS or ADAAG Take Effect for Public Colleges and Universities?

Each facility or part of a facility constructed by, on behalf of, or for the use of public entities must be accessible if construction "commences" after January 26, 1992. The DOJ says that by "commences" it means that bids were invited after that date, even if the building was already under design.

What Types of Things Are Covered by the ADA Accessibility Guidelines and UFAS?

The guidelines provide architectural and design standards for a large number of physical barriers, including:

parking areas
signs
floors
telephones
doors
ramps
hotel rooms
bathrooms
elevators
aisles
dressing and fitting rooms
drinking fountains
built-in seating or tables
check-out aisles
entrances and exits
stairs
emergency alarms
windows
sinks
assembly areas
restaurants and cafeterias

The standards do not apply to every employee "work station." They would apply to all employee common areas, lounges, health clubs, and eating areas. They also cover exterior areas of buildings. These standards provide detailed requirements for what is deemed "accessible" and the minimum number of "accessible" features required (such as the dimensions and numbers of parking spaces, emergency exits, and rooms that need to be accessible).

Why Can't This Be Left to the Architects and Engineers?

The details can be left to your architects, builders, or engineers, but colleges and universities cannot afford to take the risk that their design and construction companies are familiar with the ADA Accessibility Guidelines and UFAS. The DOJ has left it unclear how responsibility will be divided, if at all, among the different entities responsible for the design and construction of new facilities or the alteration of existing facilities. If a college contracts for a building and it is not made accessible, the DOJ is likely to place at least some of the cost of retrofitting the facility on the college. If the architect or construction company is out of business, there may be no one else to share this cost. In addition, these regulations will likely increase the cost of construction and renovations. That increased cost must be planned for in 1993 budgets.

What Else Do the Guidelines Require for Alterations?

As a general rule, only the area of the facility undergoing renovation or remodeling must be made accessible, and there is some flexibility in the specific requirements.

Both the ADAAG and UFAS have "path of travel" requirements. When an area with a "primary function" is remodeled, the rest rooms, telephones, and drinking fountains serving the area must be made readily accessible and usable by persons with disabilities, and there must be an accessible path of travel, unless the cost of these additional alterations is disproportionate to the cost of the planned renovation. If alterations to this area affect its "usability," then the institution will generally have to spend up to 20 percent of the cost of the alteration of that area to make an accessible "path of travel" from the street, parking lot, and sidewalk to that area and from other parts of the facility.

Enforcement and Damages

Employment

The employment provisions of Title I of the ADA will be enforced by the U.S. Equal Employment Opportunity Commission. The ADA largely incorporates the same procedures and remedies that apply to discrimination based on race, sex, religion, or national origin under Title VII of the Civil Rights Act of 1964. The ADA gives employees or applicants a right to sue after they file charges with the EEOC and follow certain procedures. The EEOC also has the ability to file suits on its own against private employers, and recommend that the DOJ sue public employers. The remedies available under Title VII will be available under the ADA, including hiring, back pay, reinstatement, front pay, injunctive relief, and attorneys' fees. As a result of the Civil Rights Act of 1991, remedies available under Title VII now include damages for emotional distress, punitive or liquidated damages of up to $300,000, and a trial by a jury. Those same remedies have thereby now become available under the ADA. The Clinton Administration supports the elimination of the caps on damages.

Public Colleges and Universities

Title II sets up a complaint procedure for all public entities similar to that used under Section 504. Employment complaints will generally be referred to the EEOC. Other complaints will be referred to the agency with Section 504 jurisdiction (i.e., the Department of Education for all institutions of higher education, except those schools of medicine, dentistry, nursing, and other health-related schools overseen by the Department of Health and Human Services).

Persons who believe they have been discriminated against in services by a public entity do not have to exhaust their administrative remedies under Title II. They may file suit at any time, using the remedies, procedures, and rights in the Rehabilitation Act. Recent court decisions have held that Section 504 damages include monetary damages for emotional distress. These damages may thereby be incorporated into the ADA. Attorneys' fees and costs are also available. These procedures will apply to the requirements on public colleges and universities for new construction and alterations as well as program accessibility and communication.

Private Colleges and Universities--Public Accommodations, New Construction, and Alterations

Title III of the ADA is enforced by the U.S. Department of Justice. Individuals have a right to sue to seek preventive relief, including an application for a permanent or temporary injunction or restraining order, and to recover their attorneys' fees if they prevail. The U.S. Attorney General has authority to investigate alleged violations of Title III and can sue if any person is engaged in a pattern and practice of discrimination in violation of Title III or if an alleged violation is an issue of general public importance. The remedies available in an action brought by the Attorney General include equitable relief, monetary damages, and a civil penalty not exceeding $50,000 for a first violation and not exceeding $100,000 for any subsequent violation.

Important Note for All Institutions

In early 1992 the U.S. Supreme Court issued a ruling in *Franklin v. Gwinnett County Public Schools*, 112 S. Ct. 1028 (1992), holding that Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681-1688, allowed all permissible legal remedies, including compensatory damages. Several lower courts have used the analysis of *Gwinnett* to decide, contrary to earlier decisions, that emotional distress and other monetary damages are available under Section 504. If these cases are upheld, it would dramatically expand remedies for persons with disabilities:

- Unlimited, uncapped damages for emotional distress in suits by employees, students, and others in pendant Section 504 claims

- A possibility that *Gwinnett* could be applied to permit jury trials and punitive damages in 504 suits

- Because Title II incorporates 504 remedies--all of these damages would be available in ADA Title II suits

- Under the Civil Rights Restoration Act, virtually all private institutions are covered under Section 504 and may be faced with compensatory and punitive damages in joint ADA-504 lawsuits, even though Title III has limited remedies

2.2 THE ADA AND THE REHABILITATION ACT—SIMILARITIES AND DIFFERENCES

There are four common myths and misconceptions regarding the relationship between the ADA and the Rehabilitation Act. This chapter will explain why these are myths and describe the similarities and differences between the ADA and the Rehabilitation Act.

The Four Myths

Myth No. 1: The ADA is no different from Section 504.

ADA Title II is derived from Section 504 of the Rehabilitation Act and its implementing regulations, but there are significant differences, especially in employment. Title II also imposes specific new requirements, including the mandatory self-evaluation and transition plan.

Myth No. 2: Private institutions only need be concerned about Title III.

This myth is dangerous for private institutions. Some believe that if a building is occupied before 1993 it does not have to be accessible. Other institutions perceive that they have no obligations if barrier removal is not readily achievable. Still others assume that there is no risk of suits by students because Title III has no significant remedies. These are myths. As a result of the Civil Rights Restoration Act of 1987, every private institution and every public institution is covered under Section 504 for all of its programs and services if it receives any federal financial assistance (including federally guaranteed loans to its students). Therefore, private institutions have had program access obligations under Section 504 that parallel most Title II requirements.

Myth No. 3: My institution is covered by Section 504 and is presumably in compliance with Section 504; therefore we do not need to be concerned about the ADA or make any major changes.

This perception is usually wrong and is extremely risky. Few institutions who understand the scope of and impact of Section 504 and the ADA on all of their programs, services, and employment practices would conclude that they are in compliance.

Myth No. 4: The institution complies with Section 503 and therefore it does not need to worry about Title I.

While many institutions receive government contracts and have obligations under Section 503 of the Rehabilitation Act, the Office of Federal Contract Compliance Programs (OFCCP) has not vigorously enforced those requirements. The EEOC has issued extensive new requirements under the ADA that will now apply under Section 503.

These four myths are dangerous. The prevalent assumption that the ADA is not a significant development for institutions covered under the Rehabilitation Act creates a false sense of security. The Department of Justice, Department of Education and EEOC attorneys believe many institutions are unaware or have neglected the full scope of Sections 503 and 504 and are unaware of new ADA requirements. They intend to remedy this situation.

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Background on the Rehabilitation Act: Why the Risks Have Increased

Section 503 of the Rehabilitation Act of 1973 imposes certain obligations on entities having contracts with the federal government not to discriminate in employment against persons with disabilities. Section 503 is administered by the OFCCP of the U.S. Department of Labor. Section 504 imposes requirements on recipients of federal funds (e.g., grants and loans) that apply to all beneficiaries of the program receiving assistance. Section 504 is administered by each agency that distributes federal assistance.

Section 504 was enforced starting in 1977 through regulations of the Office of Civil Rights (OCR) of the Department of Health, Education, and Welfare and its successor, the U.S. Department of Education. The DOEd regulations specifically required appointment of a 504 coordinator, a program accessibility audit, and a transition plan for making facilities accessible. Section 504's non-discrimination and program accessibility requirements resulted in the provision of auxiliary aids and services to students, some modifications in physical facilities, and led to some claims of discrimination in employment.

Most readers will remember that between 1973 and 1984 there was substantial debate regarding the scope of Section 504, centering on the definition of a "program or activity" receiving federal financial assistance. In the highly controversial 1984 decision, *Grove City College v. Bell*, the U.S. Supreme Court said that only the specific program that receives direct or indirect federal financial assistance must comply with anti-discrimination mandates. This "program specificity" requirement, which substantially limited institutions' obligations, was not expanded until the Civil Rights Restoration Act was enacted in March 1988. In that law, Congress expressly prohibited discrimination throughout an institution if any part of the institution receives federal financial assistance, including federal aid extended anywhere within a college, university, or public system of education. While this amendment essentially extended the requirements of Section 504 to all programs, activities, and services of both public and private institutions, the law did not require institutions to perform new audits or take any specific action, and no new regulations were issued. As a result, it was the rare institution that reanalyzed its Section 504 obligations in 1988 to ensure that it was not discriminating on the basis of disability in employment, programs, or services.

The passage of *Grove City* was a major deterrent to Section 504 litigation but not the only obstacle for plaintiffs. The DOEd, while having the power to terminate or suspend federal funding and file lawsuits, has no ability under Section 504 to grant specific relief to complainants. Not until the early 1980s was it relatively well-settled that complainants had a private right of action under Section 504. Prior to a 1984 Supreme Court decision, it was unclear that institutions could be sued for employment discrimination under Section 504 if the purpose of the funding was not to provide employment. Legislation purporting to lift states' Eleventh Amendment immunity was not passed until 1986. Further deterring litigation under Section 504 were the limited damages, usually interpreted (prior to 1992) as back pay, reinstatement, and attorneys' fees. The result is that few employees and students were willing to try to sort through the procedural issues under Section 504 and sue for discrimination on the basis of disability.

Section 503 of the Rehabilitation Act was used even less than Section 504. There is no private right of action under Section 503. A disabled person's only recourse against a government contractor is to file a written complaint with the OFCCP, which could then obligate a contractor to come into compliance. In theory, the OFCCP could sue, withhold payments on existing federal contracts, terminate existing contracts, or debar contractors from receiving future contracts. However, these remedies were seldom utilized by OFCCP in disability discrimination cases.

The Civil Rights Act of 1991 and Gwinnett

The relatively limited damages thought to have been available under the Rehabilitation Act have tended to deter most private lawsuits and limit settlements in suits or complaints before the Office of Civil Rights or other federal agencies. At the same time, many institutions tended to take few proactive steps unless compelled to do so by an OCR or OFCCP audit, because the risks were relatively minimal if violations occurred.

Two events have radically changed the rules of the game. The first was the passage of the Civil Rights Act of 1991 which, as discussed in Chapter 2.1, added compensatory and punitive damages to Title VII and the ADA, with a cap of $300,000 for future damages. The second change was the Supreme Court's decision in *Franklin v. Gwinnett County Public Schools.*

In the *Gwinnett* case, the Supreme Court held that a student who brought a claim of sexual harassment under Title IX of the Education Amendments of 1972 could also seek compensatory damages (e.g., for emotional distress or pain and suffering). In an extremely broad interpretation, the Court held that if Congress does not expressly limit the damages available under a law, or indicate intent to do so in the legislative history, then there is a presumption that all appropriate remedies should be available. The Court specifically rejected arguments that remedies under Title IX should be limited to back pay and prospective relief and held that "legal" monetary remedies should also be available. Several lower courts have applied *Gwinnett* to the Rehabilitation Act of 1973.

The *Gwinnett* decision does not expressly provide that punitive damages are available under Title IX, and arguments can be made that a grant of all "legal" relief, including compensatory damages, is not the same as permitting punitive damages. However, if *Gwinnett* is applied by the lower federal courts to Section 504, colleges, universities, and others subject to that law can be sued for—and claimants can collect—unlimited, uncapped compensatory damages (e.g., for back pay, front pay, and possibly emotional distress damages, pain and suffering, and other losses). Moreover, the availability of "legal" remedies usually means that cases will be heard by juries.

Gwinnett may have a double effect. Title II of the ADA, covering public colleges and universities, incorporates by reference the remedies under Section 504. If students and employees can recover unlimited uncapped compensatory damages under 504, they can collect the same remedies under Title II against public colleges. The limited damages available under Title III in suits by students or visitors will not dissuade an individual from filing a joint Title III/Section 504 action against a private college or university.

Thus, between the fall of 1991 and the summer of 1992, colleges and universities have gone from a relatively benign enforcement scheme with limited damages to the prospect of private lawsuits, jury trials, and compensatory and punitive damages in cases by students, employees, and others using an institution's programs and services, under either the ADA, Section 504, or both. Officials in higher education are just beginning to recognize the practical effects of trying discrimination cases before juries instead of responding to OCR complaints. Because of these new developments, ADA, Rehabilitation Act, and Title VII cases will be more complicated, defense of new suits more difficult (and expensive), and awards and settlements higher.

Major Similarities and Differences Between the ADA and the Rehabilitation Act on Employment Issues

The ADA's greatest impact for institutions complying with Section 504 is in employment, where new rules will affect many employment policies and practices.

The Definitions--Different Terms, Similar Meanings

The definition of who is covered by the ADA is largely unchanged from the Rehabilitation Act. The ADA uses the term "person with disability" instead of "handicapped individual," reflecting the terminology preferred by those with disabilities. The Rehabilitation Act will likely be amended to incorporate the same terminology.

The ADA and its implementing regulations have largely codified case law under the Rehabilitation Act and clarified issues that had been ambiguous. For example, it was not until the decision in *School Board of Nassau County v. Arline* that it was resolved that the Rehabilitation Act covered contagious diseases. Even then, the status of individuals who were HIV positive but had not yet developed AIDS was disputed. Based upon the ADA's legislative history, the EEOC and the DOJ say persons with contagious diseases and those who are HIV positive are covered as persons with substantially limiting impairments.

The definition of "handicapped individual" under the Rehabilitation Act includes a person who is impaired in the major life activity of "working." However, this term had been given little definition by the implementing agencies or the courts. The EEOC regulations under the ADA, in contrast, describe in detail the circumstances under which an individual might be considered to be disabled in "working" based upon that person's inability to perform a broad range of jobs. While the definition of "record of impairment" is the same under both laws, the EEOC's ADA guidance explains in detail what types of records may indicate a past impairment, including school records, insurance claims, and workers' compensation reports.

The ADA Adds New Coverage for "Association"

The ADA adds a protection not provided in the Rehabilitation Act--coverage of those "associated with" persons with disabilities. This provision adds coverage for persons who work with AIDS patients or employees who have spouses or dependents with disabilities.

Changes in Enforcement Procedures

Title I of the ADA incorporates the remedies and procedures of Title VII. An individual seeking to sue for employment discrimination under Title I must file a complaint with the EEOC and obtain a Notice of Right to Sue before filing suit in federal court. No similar exhaustion requirement appears under Section 504. While the issue has not been decided, an applicant or employee of a public college may be able to sue under Title II without filing an EEOC charge. At the time of the ADA's passage, Title VII's remedies included back pay and other "make-whole" damages, and front pay in lieu of reinstatement. The Civil Rights Act of 1991 has added compensatory and punitive damages, subject to a $300,000 cap.

Affirmative Action Versus Non-Discrimination

Section 503 of the Rehabilitation Act contains affirmative action requirements for federal contractors. The ADA does not require affirmative action for persons with disabilities, nor does Section 504. The requirements of the ADA and Section 504 are limited to non-discrimination and reasonable accommodations, including the provision of auxiliary aids and services to remove barriers.

The Definition of a "Qualified Individual with a Disability"--Codifying Section 504 Cases

The ADA is more specific than the Rehabilitation Act that a "qualified individual with a disability" is one who (1) satisfies the required skill, experience, education, and other job-related requirements of the position and (2) can perform essential functions of the position with or without reasonable accommodations. The Rehabilitation Act included the concept of "otherwise qualified," but this was not part of the regulatory definition. The "otherwise qualified" requirement is sometimes confused with the reasonable accommodation requirement in Rehabilitation Act cases. The distinction is important for employers, because it is the plaintiff's burden to prove he or she was "qualified."

"Essential Functions of Job" Are Now Defined

The Rehabilitation Act regulations did not define the term "essential functions"; this is done in the EEOC's ADA regulations. The EEOC gives extensive examples of essential versus non-essential functions and provides many examples of evidence of essential functions. This emphasis on essential versus marginal functions has prompted a reanalysis of many job descriptions to remove tasks and functions that are not essential.

The EEOC has also drawn a distinction, not always recognized in Rehabilitation Act cases, between a job function and the abilities needed to perform that function. The EEOC's most common example is that the function is to transport boxes across a warehouse and not "lift and carry" boxes. The EEOC's extensive discussions in its regulations, guidance, and Technical Assistance Manual that accommodations include alternative ways to perform tasks is broader than the analysis in some Rehabilitation Act cases.

A New, and Broad, Disparate Impact Theory Has Been Recognized

The language of the ADA is drawn from Section 504's program access requirements, prohibiting qualification standards that "screen out or tend to screen out" an individual with a disability or a class of individuals with disabilities "on the basis of disability." Few Rehabilitation Act cases discuss whether qualification standards for employment are "job-related" and "consistent with business necessity," apart from issues of reasonable accommodation, so there is limited guidance. The practical impact of the EEOC's explanation and guidance will be to expand the number and types of disparate impact challenges to neutral job criteria.

Reasonable Accommodation--Same Rule, More Guidance, and Different Applications

The requirement of reasonable accommodations under the ADA is similar to the Rehabilitation Act, but the EEOC's regulations and guidance include a number of applications and examples that were not considered "reasonable" accommodations under the Rehabilitation Act. For example, the EEOC expressly lists reassignment of incumbents to other vacant positions as a possible accommodation. The courts had interpreted the Rehabilitation Act not to require reassignment to other positions as a reasonable accommodation. The EEOC's comments that employers may have to consider flexible schedules, unpaid leave and part-time work as accommodations go beyond what has been required under some Rehabilitation Act cases.

The EEOC guidance that employers are not required to lower quality or qualitative performance standards and that employers do not need to eliminate essential job functions is derived from Rehabilitation Act cases.

New Rules for Drug and Alcohol Abuse

The ADA sets forth new rules on drug and alcohol use and abuse, which were also added to the Rehabilitation Act. Under the ADA, employers do not have to consider offering rehabilitation to employees who are using illegal drugs, or make any accommodation, provided that the employer acts on the basis of the illegal use. With employees who are using or abusing alcohol, the ADA clarifies that employers are free to set legitimate work rules and performance standards and apply those to all employees, and they can take action against individuals who violate those rules, even if they are alcoholics or drug-addicted. Thus, while some Rehabilitation Act cases had interpreted the law to mean that employers must consider or offer leave for rehabilitation as a reasonable accommodation, the EEOC would permit more stringent application of work rules to alcoholics and those suffering from drug addiction if the rules are applied equally to all employees.

Extension of the Direct Threat Standard to All Employment Decisions

"Direct threat" is the standard set by the EEOC for when an individual can be denied employment or terminated because the individual's condition would pose a risk of future injury to the health and safety of the individual or others. This phrase is derived from the *Arline* decision under Section 504. Under the Rehabilitation Act the term "direct threat" had been used only with drug addicts, alcoholics, and persons with communicable diseases. The ADA "direct threat" standard is applied to all physical and mental disabilities and requires significant or substantial risk of serious future injury. This will likely make it more difficult to screen out certain individuals based upon an elevated risk of injury and may require medical evidence.

Increased Attention to Non-Work Areas and Equal Access to Benefits

While the Rehabilitation Act and ADA regulations on non-discrimination are similar, the EEOC's ADA regulations provide far more detail and place more emphasis on equal access to all terms, conditions, and privileges of employment. Examples include access to areas such as cafeterias, lunch rooms, and other areas in a non-segregated manner; access to insurance and other fringe benefits; and involvement in and access to employer-sponsored or sanctioned social and recreational programs. This emphasis is buttressed by coverage of insurance companies as places of public accommodation under Title III and the availability of compensatory damages and attorneys' fees even if there is no job loss.

New--and Dramatic--Restrictions on Pre-Employment Inquiries

The ADA contains new, specific restrictions on pre-employment medical examinations and medical inquiries. The EEOC ADA regulations are far more detailed than any regulations or case law under the Rehabilitation Act or case law on what are permissible pre-employment inquiries.

New ADA Standards Present Difficult Issues with Workers' Compensation

The EEOC's regulations limiting workers' compensation inquiries and codifying the direct threat standard will limit the grounds under which employers can refuse to hire individuals based upon workers' compensation history or risk of injury. The ADA will affect handling of current workers' compensation claims in many ways, such as consideration of employees who currently receive compensation for reassignment to other positions as a reasonable accommodation. Under the Rehabilitation Act, an individual who is not otherwise qualified to return to his or her position could have been discharged and the workers' compensation claim settled. Under the ADA, that claim could be settled and the individual might still have to be offered another position if one is available that the individual is qualified to perform.

The ADA Will Have a Greater Impact on Collective Bargaining

Under the Rehabilitation Act, collective bargaining agreements were considered a *per se* defense to most claims for accommodations. Under the EEOC's ADA guidance, a court is entitled to consider the effect of a collective bargaining agreement as one factor in determining whether a particular accommodation would pose an undue hardship, but the EEOC is taking the position that the agreement is not dispositive of the undue hardship issue.

New Requirements on Confidentiality of Medical Information

The ADA and its implementing regulations include specific rules on confidentiality of medical records that will affect employers' recordkeeping systems. There are no similar requirements under the Rehabilitation Act.

The Similarities and Differences in Program Accessibility Requirements

Although the requirements of program accessibility under Title II and Title III of the ADA are derived from Section 504, the Department of Justice's more detailed rules and regulations on the meaning of program accessibility under the ADA, coupled with specific new requirements in Title II and Title III, will result in a substantially broader awareness and enforcement of program access requirements under both the ADA and the Rehabilitation Act.

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Private Colleges

Title III of the ADA applies to all educational services offered by private institutions, regardless of whether they receive federal funds. It is also probably true that it applies to all other programs open to the public, especially if those programs and services are in the list of 12 categories of places of public accommodation (e.g., theaters, concerts, libraries, museums, tours). There is also an argument that Title III applies to every program or service offered to students and to members of the public. Title III requirements do not reach employment; private institutions are covered under Title I for employment issues. Therefore, private institutions can argue that they are not covered under Title III for any programs, services, or facilities that are offered only to employees (e.g., a faculty lounge).

The Readily Achievable Barrier Removal--Private Institutions Must Spend Money Under Title III

Private entities must engage in readily achievable barrier removal starting on January 26, 1992. The DOJ says this is an ongoing obligation. Under Section 504, no entity was ever required to expend money on barrier removal unless there was no other way to make programs or services accessible. Thus, if a particular facility is inaccessible, the institution always has the option under Section 504 to transfer classes or other programs to an accessible facility. Under Title III of the ADA, private colleges and universities must remove structural barriers in all of their facilities and programs when this can be done without much difficulty or expense.

Non-Discrimination Rules--The Same Broad Requirements

The basic rules of non-discrimination are the same under the Rehabilitation Act and Title III. A common misconception is that the Rehabilitation Act only applies to students. This is not true; every individual with a disability using the programs or services of an institution is able to sue under Section 504. This is equally true under the ADA. Thus, users of extension services, off-campus programs and classes, attendees at football and basketball games or fine arts productions, parents and grandparents attending graduation ceremonies, and many other individuals who are not regular students may raise claims under the ADA or Section 504.

Provision of New Auxiliary Aids and Services--Without Charge

Title III requires the provision of auxiliary aids and services or alternatives needed to eliminate communication barriers, unless this would be an undue burden, to students, visitors, and others using campus facilities or services. The definition of auxiliary aids is somewhat expanded in the ADA. More importantly, technology has significantly expanded since 1977. Many auxiliary aids and services have been developed to eliminate barriers, especially communication barriers, which were unavailable when Section 504 was implemented.

Public Colleges and Universities

Title II's program access requirements are similar to the OCR regulations, but there are some significant new requirements.

- Audits. New or updated self-evaluation audits are required on or before January 26, 1993.

- ADA Coordinator. Each institution must appoint one or more ADA coordinators. This person may be the same as the Section 504 coordinator(s). The ADA coordinator(s) is responsible for all programs and services of the institution, including employment, not simply student services.

- Complaint Procedures. There must be new or revised complaint procedures to handle ADA complaints.

- Signage. There are specific rules on signage where entrances are inaccessible. Signs must direct individuals to the nearest accessible entrance.

- Maintenance of the Accessible Facilities. A new requirement in the ADA requires that when accessible facilities are provided, they must be maintained. There is a similar requirement in Title III.

The Same Rules for Program Access

Title II's general program accessibility requirements are similar to those under Section 504. No institution is required to take any action that would result in a fundamental alteration of its programs or services or impose an undue financial or administrative burden. It is unclear whether Section 504 incorporates an undue burden standard (See Chapter 5).

Auxiliary Aids and Services--New Technologies Impose New Obligations

Auxiliary aids and services for effective communication are required under Title II, as they were under Section 504. The examples of auxiliary aids are somewhat broader, reflecting new technologies. Of particular interest to many higher education institutions are the availability of assistive listening systems and devices to remove communication barriers for the hearing impaired. These can remove barriers both on an interpersonal basis and in a group setting and can also apply to large group areas such as theaters, auditoriums, basketball courts, and football stadiums.

Telephone Devices for the Deaf (TDDs)

There is a specific requirement under Title II of the ADA that institutions must provide TDDs or an equivalent means of access to communicate with applicants or beneficiaries of the institution. This term might be interpreted broadly to include any individual seeking to use the college's services or to apply for employment.

The Obligation to Provide Materials in Accessible Formats

The ADA specifically requires that all information provided by the institution must be accessible to those with hearing or vision impairments, unless it would be an undue burden. This could require colleges and universities to make any written, taped, or audio information provided to the public or to any student or employee available, upon request, in alternative formats (e.g., tape, braille, or disk).

The Requirements for New Construction and Alterations—New Standards, Few Exceptions

Private Universities

Under Title III, all private colleges and universities must comply with the new "federal building code"--the ADA Accessibility Guidelines (ADAAG). These rules apply to all new construction projects occupied after January 1993 and all alterations of existing facilities started on or after January 26, 1992.

There are significant differences between the ADAAG and the "UFAS" (Uniform Federal Accessibility Standards) required under Section 504. Public institutions are clearly given a choice between ADAAG and UFAS; the ADA's regulations are not clear how private institutions resolve these conflicting obligations. The ADA's impact is minimal for those institutions following UFAS and its predecessor; its effect is dramatic for those institutions whose projects only follow state building codes without regard to UFAS (See Chapter 8.1).

Title III imposes specific obligations that will require additional financial expenditures if private colleges and universities alter existing facilities. These "path of travel" obligations require changes to areas not under construction and may increase costs up to 20 percent of the cost of the alteration project as planned.

Public Colleges and Universities

Public entities covered under ADA Title II are entitled to choose between the ADAAG or the UFAS in facilities built by, on behalf of, or for the use of a public entity (except that public entities cannot take advantage of the elevator exemption under ADAAG). This will not be a dramatic change for institutions that have been complying with UFAS but will be significant for many institutions that were not even aware that they may have been required to apply UFAS. The ADA requirements reach all construction projects regardless of whether they receive federal funds.

The ADA and Landlord-Tenant Issues

The Rehabilitation Act regulations required recipients of federal funds to consider accessibility issues in the selection of sites and facilities and prohibited entering into contracts with third parties that would result in discrimination. The DOJ regulations expand these requirements. The difference between the ADA and the Rehabilitation Act is largely one of awareness; the Department of Justice regulations under Title III and Title II go into more detail than the Rehabilitation Act regulations on the liability of public entities in their capacities as landlords and tenants and on the similar obligations of private entities that are places of public accommodation.

2.3 TITLE I AND TITLE III CONSIDERATIONS IN TITLE II AUDITS

The ADA's Title II provisions for public institutions are extremely brief. Congress expected that the Department of Justice would add substance to the requirements of Title II, working from the guidance of individual agencies under Section 504 of the Rehabilitation Act. The Department of Justice regulations and Technical Assistance under Title II do provide some guidance to public entities, but it is surprisingly limited on many issues. Discussions with Department of Justice attorneys indicate that they expect the other federal agencies delegated with oversight authority (e.g., DOEd, DHHS) to publish regulations and technical assistance interpreting and applying the requirements of Title II to the institutions and agencies under their supervision.

The U.S. Department of Education has not yet provided specific regulations or guidance on the ADA. This leaves public institutions of higher education trying to predict what rules will be applied by the courts and looking at analogous regulations under Section 504, cases interpreting Section 504, the general guidance of the Department of Justice under Titles II and III, and their own judgment in trying to determine what must be covered in the self-evaluation and the scope of Title II's substantive obligations.

Analysis of the available resources and discussions with the relevant agencies leads to the conclusion that there is a great deal of interplay between Titles I, II, and III that will have to be considered during the mandatory Title II self- evaluation.

Title I Implications

The Need to Audit Employment Policies and Practices

Title I of the ADA does not require a formal audit of employment policies and practices. This has led some public institutions to believe that a Title II audit can be limited to student programs, services, and facilities. This is incorrect. The mandatory self-evaluation must cover all "programs and services," which almost certainly includes employment.

The Department of Education took the position in its 1977 regulations (45 C.F.R. § 84.11 [1991]) that "employment" was a program or service of an institution receiving federal financial assistance. DOEd said that the Section 504 self-evaluation had to encompass hiring and employment policies and practices as well as academic and other programs and services. While there was significant litigation over the application of Section 504 to employment, this was made moot by the Civil Rights Restoration Act. Based upon that Act and Section 504 cases, it is likely that the courts would hold that employment is a "program or service" under Title II of the ADA. The DOJ regulations expressly take this position. 28 C.F.R. § 35.140.

What Standards Apply to Title II Employment Audits?

Public employers are covered under Title I of the ADA if they have more than 25 employees. Under the DOJ regulations, all public employers are also covered under Title II. The Department of Justice has incorporated the standards of Title I into its Title II regulations. 28 C.F.R. § 35.140(b)(1). In a private action by an individual or a DOJ lawsuit, the Title I regulations of the

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EEOC will clearly apply. The Department of Justice is trying to decide the extent to which it will follow EEOC guidelines and interpretations under Title I in an action brought by the DOJ under Title I or Title II against a public entity. (As was the case under Title VII, the EEOC can process charges against a public employer, but only the DOJ can file suits.)

The EEOC and the Department of Justice have been working on coordination regulations since the passage of the ADA. These joint regulations are to govern both the processing of charges against public entities that are covered under both Title I and Title II, and the standards to be applied. These regulations, which were to be issued by July 26, 1992, had not been published in final form as of November 8, 1992. It is anticipated, however, that the EEOC's substantive regulations and interpretations under Title I will largely be incorporated under Title II.

Because employment is a "program or service" of institutions for the purposes of Title II, the Title II self-evaluation should cover hiring and employment policies and practices for all employees. The Section 504 regulations of the DOEd were relatively cursory on the obligations of employers. The approach taken in Chapter 6, and the approach the authors recommend for all public institutions, is to assume the guidelines and interpretations of the EEOC under Title I apply to Title II and to audit their policies and procedures accordingly.

Faculty Audits

Section 504 regulations do not distinguish between support staff employees and academic employees. The EEOC also makes no such distinction. The EEOC includes "tenure," for example, as merely one type of promotion that is governed by Title I. Faculty hiring and promotion decisions are analyzed just like other types of employment cases under Title VII and the ADA, other than the soon-to-expire exception for mandatory retirement of faculty. While many courts tend to give colleges and universities more flexibility in dealing with faculty decisions than certain other employee decisions, the same non-discrimination rules legally apply. Thus, the special provisions of the audits in Chapter 6 have identified issues for faculty. It is urged that all of the audit questions in Chapters 6.2 and 6.3 be applied to faculty hiring and tenure as well as employment of administrators and support staff.

Student Personnel Issues

As discussed in Chapter 6.4, employees on work-study and other student employees are covered under Title I, Title II or both. Title VII of the Civil Rights Act has never distinguished between "employees" who happen to be students and other employees for the purposes of the law's protections. Section 504 regulations focused on employment of students as non-academic services and considered it under the general obligations for program access as well as employment. The cautious approach is to assume that the EEOC's Title I guidance and regulations on employees either directly apply to all student employees or will be revised by the courts to define non-discrimination in student employment. Accordingly, the audit questions in Chapters 6.2 and 6.3 should be applied to student employment.

The Possible Effect of Title I on Academic Criteria and Program Access

The leading Section 504 case on non-discrimination in admissions to programs or academic criteria is *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). In *Davis*, the Supreme Court upheld an exclusion of a deaf student from a nursing program. The nursing program had a rotation program that included emergency room work, and its policy was to train and certify nurses that could perform any type of nursing function, including emergency room work. The school argued that a deaf student could not complete that program without a significant risk of danger to patients because she would be unable to communicate with others in an emergency room setting while wearing a mask or hear oral instructions. The school claimed it would be a "fundamental alteration" of the program to require another type of training. *Davis* can be contrasted with later cases describing the types of substitutions in teaching methods and courses that may be required under Section 504 that do not impose a fundamental alteration on the program (See discussion in Chapter 7.1 of *Wynne v. Tufts University School of Medicine*).

Post-*Davis* decisions make it clear that not every change from the way faculty wants a program to be conducted or of admissions criteria would be a fundamental alteration in programs. "Academic freedom" must sometimes give way to accommodations, the provision of auxiliary aids and services, and recognition that there are other ways of measuring academic qualifications or performance than the methods that have previously been used. Many colleges and public school systems have already faced these issues under Section 504 (e.g., course substitution of proficiency in American Sign Language for other foreign languages as an admission criteria; laboratory work as a substitution for field work for programs where field locations were inaccessible).

While it is impossible to predict the direction the courts may take under Title II, colleges and universities should be sensitive to the potential interplay between academic admissions requirements or performance standards and the ADA's Title I requirements. Under Title I, all employers will be required to provide reasonable accommodations to otherwise qualified employees with disabilities. Qualification standards that screen out individuals with disabilities must be defended by employers as job-related and consistent with business necessity. The courts may apply a different analysis to the ability of colleges to impose high academic criteria (which would not be questioned) than they apply to criteria that appear to be tied to performance of professional or vocational tasks. Plaintiffs may argue that a tougher examination should be made of vocational or professional-type requirements that exceed what would be permissible for employers. Programs in community colleges and other schools that provide training for particular careers or professions may be particularly at risk. For example:

- A criteria that students taking a secretarial course must be able to take oral dictation
- A requirement that candidates for education degrees must be able to understand oral English without the use of interpreters
- An exclusion of deaf students from student-teaching programs
- An exclusion of students from law enforcement or fire- fighting programs if they are HIV positive or might not be able to pass physicals for some police forces but could perform many other types of jobs within those professions

It is difficult to predict the extent to which colleges can rely on *Davis* to say that they are not discriminatory regardless of how their programs are structured. However, it is likely that courts faced with challenges by students to criteria established by colleges will take into account the extent to which the college is creating a barrier to entry into a job or profession that the individual could perform with reasonable accommodations. These points should be considered when conducting Title II audits of academic program criteria.

Title III Considerations

As explained in Chapter 2.1, private colleges and universities have direct obligations under Title III, both for barrier removal and in landlord-tenant situations. A private university that owns, leases, leases to, or operates facilities that are public accommodations may, under DOJ regulations, be jointly and severally liable with its tenants for violations of the ADA by those tenants.

Public universities are not directly liable under Title III, but it is important for them to understand the way Title III governs other types of public accommodations. First, private, non-profit foundations and endowments affiliated with private universities are covered under Title III if they own, lease, lease to, or operate facilities that contain other places of public accommodation. The fact that these agencies are non-profit or are affiliated with public institutions is irrelevant to their status as a landlord under Title III. The program audits in Chapter 7 include discussion of landlord-tenant issues.

Public entities are not directly covered under Title III, which reaches only private entities. The Section 504 regulations, however, set forth guidelines that public entities are liable when they offer programs and services indirectly. There are also specific provisions in the Title II regulations prohibiting public entities from entering into contracts that discriminate against students or employees. 28 C.F.R. § 35.130(b). As a result, the audits should cover any tenants or vendors that offer programs or services to students or employees.

The obligations on public entities as landlords are less clear. Some colleges and universities own property in their own name that may be public accommodations (e.g., a hotel, restaurant, or other business that has been donated to the university). If it is managed by a private entity (e.g., by subcontract to a private company) that tenant or management company is a place of public accommodation covered under Title III. The college or university would be wise to make sure that its tenant is aware of the tenant's obligations under the ADA. It is unclear whether a public college can be sued directly in its capacity as a landlord or owner of an accommodation that is not itself a place of education. There are certainly defenses that can be raised in any such action. However, the cautious approach is to assume that there could be liability or a crossclaim in an action by a student or customer against the tenant and to audit the accessibility of those operations as well as the institution's own operations.

2.4 CHECKLIST OF SUBSTANTIVE ADA MATERIALS AND ADVICE

The ADA has prompted an incredible amount of official and unofficial guidance, interpretations, and resources on how to comply with the new law. The federal agencies charged with enforcing the ADA have issued technical assistance manuals for their regulations and have established hotlines to answer calls from the public for further interpretations of their rules. Every college and university should have copies of the regulations and Technical Assistance Manuals. Note that the original regulations published in the Federal Register contain commentary that is not included when regulations are codified. In addition, trade associations and disability rights groups have published unofficial guidance materials.

Government and nonprofit agencies that operate programs and services for persons with disabilities are excellent resources for information about the ADA. We have not tried to include in the following list all of the excellent materials from various groups; the Resource Directory in the EEOC's Technical Assistance Manual will provide many useful sources. Be selective, however, when obtaining resource materials from the private sector. For example, many existing services and treatises by major publishers and firms do little more than summarize the regulations and Technical Assistance Manuals, which can be obtained for free from the various agencies.

The following checklist includes key telephone numbers and a selection of some of the more useful resources currently available:

Employment Provisions (Title I)

Official Guidance

EEOC Final Regulations	56 Federal Register 35725-35756, July 26, 1991 (to be codified at 29 C.F.R. Part 1630)
EEOC Technical Assistance Manual	Write to: EEOC Publishing Distribution Center 1801 L Street, NW, Room 4001 Washington, DC 20507 or call: (202) 663-4264 (Comprehensive two volumes. Volume 1 is substantive. Volume 2 is a comprehensive list of resources. Free from the EEOC, but also available from commercial publishers.)
ADA Hotline	(800) 669-3362 (Voice) or (800) 800-3302 (TDD)

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Unofficial Guidance

ADA Compliance Manual for Higher Education: A Guide to Title I (242 pp., $75 for CUPA members $125 for non-members)	Robert L. Duston, Karen S. Russell, Lynn E. Kerr Write to: College & University Personnel Association 1233 20th Street, NW Washington, DC 20036 or call: (202) 429-0311 x23
Returning the Claimant to The Workforce Under ADA: Low Cost, Effective Accommodations	Linda Woodbury Write to: P.O. Box 26732 Austin, TX 78755-0732 or call: (512) 345-4960 (To be published November 15, 1992. The book describes early intervention strategies and contains the most current accommodation options, based on recommendations from rehabilitation engineering centers nationwide.)
Job Accommodation Network (JAN)	Write to: West Virginia University 809 Allen Hall Morgantown, WV 26506 or call: (304) 293-7196 or (800) 526-7234 (Free hotline sponsored by President's Commission on Employment of Persons with Disabilities.)

State and Local Government Programs and Services (Title II)

Official Guidance

DOJ Final Regulations	56 Federal Register 35693-35723, July 26, 1991 (to be codified at 28 C.F.R. Part 35)
DOJ Technical Assistance Manual	Write to: U.S. Department of Justice Office on Americans with Disabilities Act Division of Civil Rights P.O. Box 66118 Washington, DC 20035-6118 or call: (202) 514-0301 (voice) (202) 514-0381 or 514-0383 (TDD) (Free. Ask for Title II Technical Assistance Manual.)
DOJ Hotline	(202) 514-0301 (voice) (202) 514-0381 or 514-0383 (TDD)
HUD Accessibility Guidelines for Federally Funded Multifamily Dwellings	56 Federal Register 9472, March 6, 1991 (codified at 24 C.F.R. section 100.205 (1992))

UFAS (GSA standard)	41 C.F.R. Part 101-19 and Appendix A (1991)
DOEd Regulations under Section 504	34 C.F.R. Part 104 (1991)
ATBCB/ADAAG	See description under Title III

Unofficial Guidance

Association of Higher Education and Disability (AHEAD)	Write to: Jane Jarrow P.O. 21192 1465 Northwest Boulevard Columbus, OH 43212 or call: (614) 488-4972 (Formerly "Association on Handicapped Student Service Programs in Postsecondary Education" [AHSSPPE]. *ADA Response Handbook: A Practical Gude for Service Providers* will be available in fall 1992 for $60.)
HEATH Resource Center	Write to: One Dupont Circle, Suite 800 Washington, DC. 20036-1193 or call: (800) 544-3284 or (202) 939-9320 (Resources and referrals on problems facing students with disabilities. Publishes a comprehensive resource directory, updated annually—free.)
Evan Terry Associates, P.C. Accessible Design Specialists	Write to: 2129 Montgomery Highway Birmingham, AL 35209 or call: (205) 871-9818 (Private architectural firm with substantial ADA and public sector experience. Recently published *The Americans with Disabilities Act: ADA Facilities Compliance Workbook.)*
Association of Higher Education Facilities Officers (APPA)	Write to: 1446 Duke Street Alexandria, VA 22314 or call: (703) 684-1446 (Published *Removing the Barriers: Accessibility Guidelines and Specifications,* available for $53.)

Public Accommodations and Commercial Facilities (Title III)

Official Guidance

DOJ Final Regulations	56 Federal Register 35543-35691, July 26, 1991 (to be codified at 28 C.F.R. Part 36)

DOJ Technical Assistance Manual

Write to: U.S. Department of Justice
Office on Americans with Disabilities Act
Division of Civil Rights
P.O. Box 66118
Washington, DC 20035-6118
or call: (202) 514-0301 (voice)
(202) 514-0381 or 514-0383 (TDD)
(Free. Ask for Title III Technical Assistance Manual.)

DOJ Hotline

(202) 514-0301 (voice)
(202) 514-0381 or 514-0383 (TDD)

ATBCB Final Regulations (ADA Accessibility Guidelines)

56 Federal Register 35407-35542, July 26, 1991
(to be codified at 36 C.F.R. Part 1191)

ATBCB Hotline

(202) 272-5434 or (800) 872-2253

Unofficial Guidance

The Americans with Disabilities Act Checklist for Readily Achievable Barrier Removal

Write to: Barrier Free Environments, Inc. and
Adaptive Environments Center, Inc.
The Mid-Atlantic Disability and Business
Technology Assistance Center
2111 Wilson Boulevard, Suite 400
Arlington, VA 22201
or call: (703) 525-3268 (Voice/TDD)
or (800) 232-4999
(Free publication through DOJ grant.)

Transportation Issues (Including Campus Bus Services) (Titles II and III)

Official Guidance

DOT Final Regulations

56 Federal Register 45583-45778, September 6, 1991
(to be codified at 49 C.F.R. Parts 27, 37 and 38)

DOT Information

Write to: Bob Ashby, Esq.
400 Seventh Street, SW
Room 10424
Washington, DC 20590
or call: (202) 366-9305 (Voice)
(202) 755-7687 (TDD)

ATBCB Transportation Facilities Accessibility Guidelines

56 Federal Register 45499-45528, September 6, 1991
(to be codified at 36 C.F.R. Part 1191)

ATBCB Transportation Vehicles Accessibility Guidelines

56 Federal Register 45529-45582, September 6, 1991
(to be codified at 36 C.F.R. Part 1192)

Telephone Relay Systems (Title IV)

Official Guidance

Federal Communications Commission

Write to: 1919 M Street, NW
Room 222
Washington, DC 20554
or call: (202) 632-7260 (Voice)
(202) 634-1855 (TDD)

General Guidance and Information

Legal Right of Persons with Disabilities: An Analysis of Federal Law

B. Tucker and B. Goldstein
LRP Publications
Write to: Horsham, Pennsylvania 19044

Removing the Barriers: Accessibility Guidelines and Specifications

B. Colter
The Association of Higher Education Facilities Officers (APPA)
(Comparison of ADAAG and UFAS. Available for $53.)

The Americans with Disabilities Act Compliance Manual: A Practical Guide for Mass Retailers

R. Duston
Schmeltzer, Aptaker & Shepard, P.C.
Write to: Morrison Cain
International Mass Retail Association
Suite 1000
1901 Pennsylvania Avenue, NW
Washington, DC 20006
or call: (202) 861-0774
(Title I and Title III manual. Over 600 pages, available to non-members for $125.)

Doorways to Independence

C. Compton
Gallaudet University
Write to: Academy of Dispensing Audiologists
3008 Millwood Avenue
Columbia, SC 29205
or call: (800) 445-8629
($15. Excellent, 67 pp. 1989 booklet on assistive technologies for persons with hearing impairments.)

Communication and the ADA (Effective Communication and Disability)

Write to: American Speech-Language-Hearing Association
10801 Rockville Pike
Rockville, MD 20852
or call: (800) 638-8255 (TDD)
(Four-page overview on communication needs and technologies.)

Guide to the Section 504 Self-Evaluation for Colleges and Universities

G. Biehl
National Association of College and University Business Officers, ed. DHEW
(1978 publication, now out-of-print.)

Access to Institutions of Higher Education for Students with Disabilities

Write to: H. Kaufman
National Association of College and University Attorneys
One Dupont Circle, NW
Suite 620
Washington, DC 20036
or call: (202) 833-8390

CHAPTER 3

PHASE I: PREPARING AND CONDUCTING AN ADA SELF-EVALUTION--TASK FORCE TO AUDITS

The Americans with Disabilities Act (ADA) imposes affirmative obligations upon all public colleges and universities to evaluate and audit their programs and services, including employment, by January 26, 1993. Similar audits are recommended for private institutions. This chapter discusses and outlines a recommended approach to complete this self-evaluation/audit. Chapter 3.1 describes the creation and composition of a task force to address ADA compliance issues and implement an institutional policy for achieving nondiscrimination against persons with disabilities. Chapter 3.2 stresses the need to obtain community, student, faculty, and union input regarding the institution's obligations under the ADA and methods of doing so without increasing the risk of liability. Chapter 3.3 discusses the role of the ADA coordinator in achieving accessibility under Title II. Chapters 3.4 and 3.5 outline the audit process, including the legal implications of conducting audits, and detail the steps to be taken during Phase I.

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3.1 CREATING AN ADA TASK FORCE

Chapter 1.2 emphasized the practical need for making ADA compliance an institutional policy and explained why no single individual can complete the tasks necessary to evaluate all programs and services of most institutions of higher education. The ADA vests the head of each institution (i.e., the president or chancellor or his or her designee) with the responsibility for ensuring ADA compliance and determining whether a particular accommodation or removal of a structural barrier would be an undue burden or entail a fundamental alteration of the program. An appropriate role of the president or chancellor is to direct that the audit be completed, make the self-evaluation and ADA compliance an institutional priority, and delegate to some person or group sufficient power and resources to ensure that the self-evaluation is completed on time and compliance priorities are established.

Centralized planning and oversight of the self-evaluation/ audit is the only effective method to ensure that all programs and services are evaluated and that appropriate decisions are made regarding institutional compliance. Many department heads, program heads, and individual administrators are becoming familiar with the ADA's effects on their particular areas but may be unaware of the ways in which their obligations must be integrated with the obligations of the entire institution. For example:

- Physical plant administrators may understand the need to retrofit facilities to ensure physical access, but they may not have considered alternatives to barrier removal to provide program access, or to communication issues.

- An ADA coordinator with a background in one area (e.g., personnel or affirmative action/EEO) may lack experience in, or input into, other programs and services, such as academic affairs or faculty hiring.

- The Department of Student Services or Student Affairs may have knowledge of auxiliary aids and services that are available for students but has not shared its experiences or existing resources with the Personnel Department for employee accommodations.

- Individual department or program heads may be strongly lobbying for additional resources for their area without considering the resources of the institution as a whole and competing priorities.

The solution to these problems is the creation of an ADA Task Force to centrally plan and administer the self-evaluation and then to evaluate the results and set institutional priorities. While many individuals will be involved in evaluating ADA compliance and subcommittees may be established, the authors recommend that the task force's executive committee consist of the following individuals or their senior assistants:

- VP finance/chief financial officer/business officer

- VP personnel/human resources

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- VP of physical plant/facilities
- Director of Affirmative Action/EEO
- VP academic affairs/provost/dean of the faculty
- VP student affairs/student life (if different)
- ADA/504 coordinator(s) (if different)

The task force should be guided by, or have access to, legal counsel familiar with the ADA (See Chapter 3.4). The task force may also wish to identify one or more medical experts to consult on disability issues (e.g., workers' compensation doctor or occupational therapist).

It is important that the senior individual in each of these areas be involved in the ADA self-evaluation, even if much of the substantive work is done by their designees, because of the decisions that will have to be made during "Phase II" of the audit process. After each department and program has conducted an audit of its particular area and made its recommendations for changes, the role of the task force is to analyze departmental recommendations, determine what problems must be corrected to be in compliance and what are merely long-term goals or discretionary improvements, set institutional priorities for compliance, establish an institutionwide budget for ADA compliance, and allocate resources from that budget for compliance projects. The individuals who will ultimately answer the questions: "What are our legal obligations?"; "How much can we afford to spend?"; and "How can we achieve the greatest access with limited resources?" should be involved in the task force from the outset and be aware of the issues that will have to be resolved.

Subcommittees and Working Groups

There will likely be several subcommittees or working groups that will carry out the self-evaluation and make recommendations to the executive committee of the task force. For example, the vice president of finance will likely establish a working group to develop recommendations for the percentage of financial resources that can be dedicated towards ADA compliance without imposing an undue burden. One possible approach is to establish interdisciplinary committees to oversee the principle areas to be audited:

(1) Employment

The employment committee should include individuals responsible for:

- Administrative and support staff
- Major departments that handle their own employment
- Faculty hiring and tenure
- Student employment/work study

- Temporary employees
- Satellite campus/extension services (if different)

(2) Facilities

The facilities audit committee will include representatives from:

- Physical plant
- Maintenance
- Space planning/scheduling
- Architecture/design
- Telecommunications
- Parking

(3) Program Access (Could Be Separated into Two Committees for Academic Affairs and Student Affairs)

This committee, which will audit all non-employment programs, should include representatives from:

- Student life
- Disabled student coordinators
- Provost
- Departmental representatives
- Admissions
- Financial aid
- Major "public" programs (e.g., athletics or performing arts)
- Housing
- Transportation
- Off-campus/extension programs
- Major separate colleges/schools with their own programs (e.g., law school or medical school)

The Role of Department and Program Heads

Most institutions will find that the most efficient way to conduct audits of programs and services will be to prepare and distribute survey forms to the heads of the various departments and to program heads within the institution (Sample survey forms are included in Chapters 6 and 7). Phase I of the self-evaluation will involve collecting information and developing recommendations for each department, program, and operation within the institution. Some institutions may have the survey instruments completed and recommendations developed on a decentralized basis, and others may use a team to interview department heads and to conduct individual program audits. In either case, the self-evaluation process or the development of recommendations will likely require participation by the head of each individual program or service or a designee. For example, an audit of the programs of the physics department will have to include an analysis of what laboratories could be relocated, if necessary, to achieve program accessibility, and which classes could not, as a practical matter, be relocated to accessible facilities. This will likely involve a decision by the chair of that department or his or her designee.

Each institution will have to develop a list of all programs, services, and departments of the institution prior to distributing the Phase I audit or conducting interviews. The following is a list of some of the types of programs and departments that will likely have to be audited and the key administrators that will have to be involved in the self-evaluation process in addition to the executive committee of the task force. At multi-campus institutions or those with independent colleges and schools, each campus/school would have to audit these areas:

- Admissions
- Agricultural extension programs
- Athletics
- Campus security/police
- Chairs of individual departments
- Community affairs/public relations
- Counseling services
- Deans of every department, school, or college
- Development officer (including representatives of any affiliated foundations, endowments, or trusts)
- Financial aid
- Fine and performing arts
- Food service

- Housing (on-campus and off-campus)
- Lecture series
- Library services
- Loss prevention/risk management
- Medical centers/clinics
- Off-campus or extension operations
- Personnel placement (including campus recruiting)
- Registrar
- Student employment/work study (if not under personnel)
- Student government
- Student health services
- Student services/student life (including clubs and organizations)
- Telecommunications (including telephone systems, pay phones, radio and TV stations, etc.)
- Televised extension courses
- Tenant/vendor relations (e.g., oversight of banks, bookstores, and other private operations on college property)
- Transportation (including bus service, paratransit, other vehicles, and parking);
- Workers' compensation (if not part of personnel)

This list is not exhaustive. The organization of each institution and the types of programs and services it offers to the public may affect the audit process. For example, if the vice president of physical plant is assigned the task of conducting an initial audit of the physical plant's own employment practices, he or she would have to determine whether employment is handled on a centralized or decentralized basis. If training of new employees is conducted by each area (e.g., housekeeping, maintenance, engineering), then each individual department head would have to either fill out an appropriate survey form or be interviewed regarding awareness of needs for accommodations in training. Similarly, there may be no single individual with central responsibility for leasing off-campus facilities for classes, dealing with vendors or services on-campus (banks, campus bookstore, cafeterias, insurance) or for leasing or loaning facilities to outside organizations. These issues may have to be audited on a program-by-program basis.

While the audits are not a substitute for training, the audit questions have been designed so that the process of answering will raise awareness of ADA obligations. The task force should encourage various program officials and department heads to either complete the survey themselves or to review the results before they are submitted to the task force.

3.2 OBTAINING COMMUNITY, STUDENT, FACULTY, AND UNION INPUT

The ADA requires public institutions to accept comments from the public on the self-evaluation. (28 C.F.R. § 35.105(b).) Copies of the self-evaluation and transition plan must be made available for public inspection after they are completed. (28 C.F.R. § 35.150(c) and (d).) In setting priorities and evaluating compliance, colleges and universities will want to solicit the input of student leaders, organizations representing students or employees with disabilities, and faculty members. Involvement of the campus community and the community at large is likely to provide many important insights. The Department of Justice recommends in its Technical Assistance Manual that institutions consult with individuals with disabilities and local organizations who can readily identify physical or communication barriers. Organizations representing persons with hearing impairments may have knowledge of resources in the community. Individuals and organizations may also be able to identify sources of funding and provide ideas regarding lower-cost methods of eliminating barriers.

Some colleges and universities have considered creating special positions on the task force for a faculty member, employee, student, or other individual with a disability. There is no disadvantage if the task force is defined as a committee of the whole with many different individuals. If, however, the task force is the executive group discussed above, there are potential disadvantages with any student, faculty, or community representative being part of the task force, regardless of whether the individual has a disability. Phase II of the process outlined in this manual involves an analysis by an executive committee or task force of the results of the initial audit. This evaluation may involve, for example:

- Allocating budgets
- Setting budgetary priorities between competing interests and timetables for completion
- Modifying or changing requirements for academic criteria
- Decisions on faculty hiring and tenure
- Development of affirmative action plans
- Making tough decisions that certain barriers are less important than others
- Analyzing risks of litigation over various physical and communication barriers, programs, and services

Some of these issues, like budgets or faculty hiring, are areas that most institutions would not want to be decided by students or community representatives. The task force may also discover, in consultation with counsel, that certain policies and practices may have violated Section 504 and need to be promptly changed.

There appears to be no requirement in the ADA that all the working papers and analyses of a task force be open to public scrutiny. The addition of a community or student representative on

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the executive task force during Phase I or Phase II may not only result in a waiver of any applicable privileges (see below), but also is more likely to ensure that identified problems are publicized or appear in subsequent court papers.

Moreover, while organizations of persons with disabilities can provide a valuable resource, their extensive involvement in campus audits could have disadvantages. Certain groups will tend to overemphasize the barriers to persons with the types of disabilities of their members. Other groups may demand the removal of barriers beyond what the ADA requires (e.g., the creation of a barrier-free environment where compliance can be achieved through alternative means). Groups who have been intimately involved with identifying barriers on the campus may expect swifter compliance than the institution can afford. For these reasons, many institutions will find it more advantageous to form an advisory committee of students and community representatives with disabilities than to include them on the executive committee of the task force.

The role of union representatives is much more complicated. There are many difficult, unresolved issues in the interplay between the ADA and the National Labor Relations Act or state laws governing public sector bargaining. An analysis of these issues is beyond the scope of this manual, and will vary state by state in the public sector. (For a discussion of some of the issues, see CUPA Title I Manual, Chapter 2; "Memorandum of NLRB General Counsel to Field Offices," *Daily Labor Report* [BNA] No. 158, Aug. 14, 1992.) As a general rule, however, the self-evaluation will not involve a change in terms or conditions of employment that will trigger a duty to bargain. During Phase II of the self-evaluation, when the task force is analyzing recommendations, it will have to resolve with legal counsel the appropriate role of bargaining unit representatives in implementing compliance.

3.3 THE ROLE OF THE ADA COORDINATOR OR COORDINATORS

There is substantial confusion among public institutions as to the role of the ADA coordinator. The Department of Justice regulations require that public entities designate "at least one employee to coordinate its efforts to comply with and carry out its responsibilities under [Title II] including any investigation of any complaint communicated to it alleging its non-compliance with [Title II] or alleging any actions that would be prohibited by [Title II]." (28 C.F.R. § 35.107(a).)

Contrary to popular belief, it is not required that there be only one ADA coordinator for the entire institution. It would be permissible, for example, for the institution to establish an ADA coordinator for employment and an ADA coordinator for academic affairs, student services, and other programs. Similarly, a community college or institution with multiple campuses could designate an ADA coordinator for each campus, subject to the understanding that the ultimate burden of determining whether or not the institution can afford particular accommodations rests with the president or chancellor or his or her designee.

The DOJ envisions that the ADA coordinator(s) will have three responsibilities:

- Initial coordination of compliance
- Oversight of ongoing compliance efforts
- Investigation of ADA complaints

The position of ADA coordinator is similar to the Rehabilitation Act requirement for a Section 504 coordinator. While not required, the authors strongly recommend that the same individual carry both titles and be responsible for the institution's compliance with both the ADA and Section 504.

The responsibility of the ADA coordinator for investigation of complaints is fairly straightforward. One or more individuals should be clearly designated as ADA/Section 504 coordinator(s). The name, office address, and telephone number of those employees designated to take complaints and serve as ADA coordinators must be publicized and made available to any interested person. These individuals will also oversee adoption and publicity of grievance procedures for resolution of ADA complaints. The other part of the ADA coordinator's responsibilities are more difficult to define. In many institutions, the title of ADA coordinator has been assigned to one person, either the Affirmative Action/EEO officer or the personnel officer. Yet, in many cases, that person has not been given responsibility over campuswide compliance. Many institutions may wish to clearly define the position of ADA coordinator and devise special reporting procedures so that the entire institution understands the coordinator's role. A sample policy statement is included as Appendix A to this chapter.

ADA coordination and compliance is easily a full-time job at most institutions during 1992-1993 and could continue to be full-time depending on the institution's size and the number of students, employees, or visitors with disabilities. If the official responsibilities are assigned to an existing director/vice president with other responsibilities, each college should strongly consider adding at least one ADA staff position and appropriate support staff to assist the ADA coordinator.

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3.4 A NOTE ON THE LEGAL IMPLICATIONS OF CONDUCTING AUDITS

Community colleges and all other public institutions are required under Title II to conduct self-evaluations. Private institutions also need to evaluate their policies and procedures in order to ensure they are in compliance with Titles I and III of the ADA, and many will conduct audits. The EEOC and the DOJ both advise review of policies and procedures to promote voluntary compliance with the ADA. However, there are legal risks associated with conducting self-evaluations or audits. Internal working papers or analysis of past practices may result in the identification of policies violative of Section 504 or state laws. No institution wants to conduct an analysis of its areas of legal vulnerability and then have its analysis used against it in subsequent litigation. While public institutions cannot avoid conducting the self-evaluation required under Title II, there may be ways for all institutions, public and private, to limit the risk that the details of their findings (as distinct from the transition plan and final report of changes in policies) will be discoverable or admissible in subsequent ADA/504 litigation.

There is some authority protecting the results of equal employment self-evaluations from discovery as "privileged." The courts have sometimes recognized a "self-evaluative privilege" for employers that have done audits of their EEO practices, but this privilege has not been recognized in every case. Colleges and universities can and should argue that because the ADA is a new law and requires a self-evaluation, Congressional policies favoring voluntary compliance would be frustrated if a full self-evaluation were discouraged by the absence of a privilege, the audit process as well as most results should be immunized from disclosure during lawsuits under a special ADA self-evaluative privilege.

The authors have found in their litigation practice that employers cannot rely on the self-evaluation privilege. As an alternative, employers have found it useful to assert the "attorney-client" and "work-product" privileges as a defense to disclosure of self-evaluations of compliance with civil rights laws. In our experience, it is very difficult to assert these privileges without advance planning. We have successfully litigated claims of privilege as to sensitive in-house analyses in a wide variety of settings. In most cases, however, the employer must take certain steps in advance of litigation to establish a claim of privilege and then to preserve it. There is no guarantee that an assertion of privilege will prevail, especially where a mandatory self-evaluation is required. Moreover, in many states public institutions are required to operate under "sunshine acts" and either cannot assert a defense of privilege or can only do so in very narrow circumstances (e.g., actual litigation). Each higher education institution should consult with its legal counsel on the applicability of various privileges in its state.

As a general rule, there are several steps that should be taken to assist in raising the defense of the attorney-client or work-product privilege and in preserving all privileges once they have been made:

- A risk of discovery occurs as soon as a manager starts using or conducting any type of audit, including asking questions, writing answers, and conducting a self-evaluation to determine whether the institution is in compliance with the ADA.

- To maximize privilege arguments, individual department heads, program managers, and others should be instructed not to do ADA audits on their own without direction of and oversight by the ADA coordinator and counsel.

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- All ADA audits should be conducted under the general supervision of the institution's in-house counsel or outside EEO counsel. There should be documentation that the audit is being conducted under the direction of and at counsel's request for the express purpose of determining the extent of the institution's compliance and formulating advice to the institution on steps needed to ensure compliance with the ADA.

- All survey answers and results, whether written or oral, should be sent or provided directly to counsel, who can then work with and advise the ADA Task Force in formulating legal advice and recommendations. These raw survey results can then be prepared in a self-evaluation report that will be made available to the public.

- All raw survey results and audits (including copies) actually used by the institution should be turned over to counsel at the completion of the self-evaluation.

- After counsel has helped make recommendations for compliance, survey results should be maintained by counsel only to the extent needed to aid counsel and the institution in monitoring the compliance or if the results could be useful in addressing future accessibility issues.

3.5 THE AUDIT PROCESS

The ADA self-evaluation/audit required under Title II will involve many different audits of facilities and programs, synthesizing the results and setting priorities. While there is no specified method in the ADA regulations for conducting a self-evaluation, the following is a recommended process for obtaining the necessary information, identifying problems, and implementing remedies. In the first phase of the process, data collection audits may entail a separate analysis or survey of each individual department, program, service, activity, and facility and identification of potential problems and recommendations. In the second phase, institutions will identify actual barriers to access, estimate costs to remedy those problems, set institutional priorities, and develop a transition plan. The third phase will be budgeting and compliance.

The following is an outline of this process. Chapters 4 and 5 describe Phases II and III. The forms and audit questionnaires for Phase I are contained in Chapters 6, 7, and 8.

Phase I Data Collection and Audits: Identifying Potential Problems and Developing Recommendations

The "audits" conducted during Phase I can be broken down into three separate areas:

- Employment
- Programs and services
- Facilities

The role of the ADA coordinator(s) and the task force during Phase I is to:

- Develop/Modify the Survey Instruments. The forms and checklists in this workbook may need to be tailored to the needs of a particular college.
- Provide Staffing. The task force will have to assign personnel, subcontract where necessary, establish subcommittees, and allocate resources.
- Conduct or Ensure Completion of Surveys. Some institutions may have a large task force that conducts most of the surveys in Phase I; others will have surveys decentralized. The key role for the task force is to gain cooperation of department and program heads.
- Prepare for Phase II. This may involve developing techniques for manual or computerized analysis of audits and surveys; consulting with legal counsel on how to set priorities; and developing preliminary budgets.

I. Employment Audit

The employment audit will usually be conducted by the human resources/personnel department. The personnel department should be vested with the responsibility for auditing or overseeing the audit of policies, procedures, and practices in all areas of employment. These will include:

A. The Hiring Process. Audits of the hiring process will have to cover:

(1) Job descriptions, and whether essential functions have been identified

(2) Qualification standards

(3) Recruitment and advertising

(4) Provision of reasonable accommodations in the job application process

(5) Pre-employment testing

(6) Drug testing

(7) Medical examinations and inquiries, including workers' compensation questions

(8) Analysis of reasonable accommodations

(9) Reference checking

(10) Employment agencies

(11) Training of interviewers and others involved in the hiring process

B. Employment Policies and Procedures. The audit of employment policies and procedures will include review of:

(1) Accessibility of work and non-work areas for existing employees with disabilities

(2) Accessibility of work and non-work areas for future employees

(3) Auxiliary aids and services for effective communication

(4) The process for making reasonable accommodations

(5) Training and professional development

(6) Qualification standards for promotion and advancement

(7) Testing

(8) Layoff and return-to-work policies

(9) Demotions and terminations

(10) Compensation

(11) Leave of absence policies

(12) Attendance policies

(13) Fringe benefits

(14) Social and recreational programs

(15) Insurance

(16) Drug screening

(17) Medical monitoring

(18) Employee assistance programs

(19) Workers' compensation

(20) Training on ADA responsibilities

C. Student Personnel Issues. If the human resources/personnel department does not have authority over employees on work-study and other employees who happen to be students, the same type of audit of hiring procedures and employment policies and practices must be done with regard to student employees.

D. Faculty Hiring and Tenure Decisions. All of the hiring and employment issues that involve exempt and non-exempt employees in support services and administration can arise with regard to faculty, including part-time and adjunct faculty. Faculty policies, procedures, and practices, including tenure procedures and standards, must be reviewed.

E. Departmental Practices. In many cases the human resources/personnel department will not be the entity ultimately responsible for setting particular policies and procedures. For example, attendance and leave practices may be administered on a departmental basis. The writing of job descriptions is usually decentralized, as is interviewing, hiring, and training of new employees, especially in support services. The human resources/personnel department will either have to conduct on-site audits with each department or program that administers employment policies and procedures or use the survey instrument to collect data from each department, program, or activity on its hiring and employment practices.

II. Programs and Services Other Than Employment

The scope of the audit of programs and services will depend upon the size of the institution and the types of programs and services offered. Programs and services are not limited to those provided to students and include, for example, visitors to the campus, extension and non-credit course attendees, and any member of the community who requests information, materials, or assistance from the institution.

Many institutions may find it useful to conduct separate audits of academic programs and services and non-academic programs/student services.

A. Academic Programs and Services. Areas audited will include:

(1) Recruitment

(2) Admissions process

(3) Admissions criteria

(4) Preadmission medical inquiries

(5) Academic requirements for each program or course of study

(6) Academic rules and regulations

(7) Examinations and testing

(8) Provision of auxiliary aids and services (classroom and non-classroom)

(9) Physical accessibility of on-campus programs

(10) Off-campus academic activities

(11) Research opportunities

B. Services to Students. Some of these areas are of primary concern to students, but may also involve other individuals visiting the campus:

(1) Housing (on-campus and off-campus)

(2) Student health services

(3) Health insurance

(4) Counseling services

(5) Financial aid

(6) Physical education

(7) Athletics and recreation

(8) Campus transportation

(9) Clubs and organizations

(10) Placement (including on-campus recruitment by employers)

(11) Work study (if not covered under employment)

C. Other Non-Academic Services to Students and the Public:

(1) Fine and performing arts

(2) Athletic events

(3) Library resources

(4) Museums and tours

(5) Services provided through others (e.g., book store, banks, food service)

(6) Research assistance

(7) Extension services

(8) Hotlines

(9) Use of campus facilities

(10) Lecture series

(11) Graduation

(12) Research publications, films, books, TV, or radio

(13) Social or recreational areas owned/operated by the college

(14) Day care

D. Landlord/Tenant Issues. These areas should be considered if not covered separately:

(1) Places of public accommodation on campus property

(2) Private foundations, trusts, or endowments

(3) Facilities leased by the college or university

III. The Facilities Audit

The facilities audit will usually be administered separate from the audit of programs and services even though the two must be analyzed together in Phase II to determine what goes into the transition plan. The facilities audit will largely focus on identifying major physical and structural communication barriers in existing facilities (e.g., the absence of assistive listening systems or signage) and identifying which facilities on campus are already functionally accessible by persons with certain disabilities. This needs to be combined with an audit of which programs can be relocated and which ones cannot, and the college's plan for space planning and assignment, in order to set priorities for the transition plan (See Chapter 4).

A. Scope of the Facilities Audit. The facilities audit will cover:

(1) Every building owned by the college or university, including out-buildings and buildings used only by employees

(2) Every off-campus facility leased by or used by the college or university for any purpose, including office space, extension classes, night classes, and research

(3) Exterior areas that are used for programs or activities (e.g., quads or squares that are used for cocktail parties, picnic areas, boat landings)

(4) Parking areas

(5) Path of travel between accessible parking and accessible facilities

B. Audit Coverage. Chapter 8 goes into greater detail on what must be covered in facilities audits. Generally, the audits of facilities will focus on the following areas:

(1) Whether the building was built in compliance with applicable access codes, including Section 504 (e.g., was the building built after 1988 or between 1969 and 1987 with federal funds?)

(2) Major barriers to entry or access (e.g., steps with no ramps or alternative accessible entrances, no elevators to higher floors, inaccessible classrooms, protruding objects)

(3) Communication barriers, such as the absence of appropriate signage or assistive listening systems

(4) Access to bathrooms, water fountains, telephones, and other amenities

These audits should not merely note variations from the ADAAG or UFAS. To be useful, the audit should try to identify how much particular elements vary from compliance with the new building code standards and whether or not these non-compliant items pose a real barrier or are simply an inconvenience item (See Chapters 4 and 8).

IV. Identification of Potential Problems and Possible Solutions

Most institutions will find it most efficient to have each department or program head identify potential problems during Phase I and outline a recommended course of action to remove barriers or change policies. We strongly urge, however, that these recommendations be a starting point for analysis, not the final action plan of the institution, for several reasons:

- Few department heads will be aware of the variety of methods to remove barriers or availability of resources. There may be other, less costly solutions.
- Department heads may miss problems that will be identified in an institutionwide review.
- Budgetary projections and priorities should be set on an institutional basis to ensure that the greatest access is provided with the available funds.
- The ADA coordinator, task force, and legal counsel should determine whether the areas identified are problems under the ADA and whether the recommendation will eliminate the barrier or solve the problem. This is Phase II of the self-evaluation process.

Phase II Analysis of the Audits and Developing and Setting Priorities

I. Determination of Non-Complying Items

For employment and program accessibility, this will involve identification of policies, procedures, and practices that are discriminatory or may have a tendency to discriminate.

For facilities, this will be identification of structural barriers and the determination of whether the programs and services can be offered in another location or made accessible through methods other than structural renovations.

II. Developing Recommendations for Compliance and Determining the Cost

For employment and program access, each item that a department or program head believes might not be in compliance should be accompanied by a recommendation for correction of the problem. If the task force and legal counsel agree that a particular problem must be remedied, an estimate will have to be made of the cost (e.g., the staff time to review and correct position descriptions; time and resources for training; the cost of buying or renting auxiliary aids and services for public performances).

For facilities issues, the process of comparing the results of the facilities audit and the program access audit should identify whether any structural changes are needed. Estimates will then have to be prepared of the cost of fixing non-complying items. This may involve consultation with architects on accessible design options.

III. Setting Campuswide Priorities and Budgets

The task force will have to take the recommendations and prepare both a transition plan for structural changes and a plan for remedying other non-compliant items. These issues are addressed in Chapter 4.

IV. Preparation of a Written Self-Evaluation Report and Transition Plan and Plan for Compliance

A written report is required under Title II and must be available to the public. The transition plan for completing structural renovations, which shows deadlines, must also be in writing. If any non-complying item will not be changed because it is an undue financial or administrative burden or would result in a fundamental alteration, that determination must be in writing.

V. Obtaining Community Input and Comment (If Not Done Previously)

Each public entity must make its evaluation results and transition plan public and accept comments on the plans.

Phase III Execution of Transition Plan and Correction of Items Identified in the Self-Evaluation

I. Budgeting

The first part of Phase III is securing the funds to implement compliance efforts, either through state budgetary processes or rearranging budgetary priorities.

II. Execution of Transition Plan

All renovations in the transition plan must be completed before January 26, 1995. The institution's capital improvements program and process for selecting architects and contractors will have to consider this deadline. The task force should receive periodic reports on the physical renovation plans.

III. Oversight of Other Compliance Efforts

The task force must take its priority list and plan for compliance of non-structural issues, assign responsibility, assist in budgeting, and monitor efforts to ensure all necessary changes are made by each department or program.

IV. Training and Education

These ongoing efforts will help minimize ADA violations by those unaware of their obligations.

V. Complaint Procedure

Establishment of the complaint procedure and processing complaints will remain an ongoing obligation of the ADA coordinator.

VI. Coordination of Requests and Resources

Some institutions may decide to have all requests for assistance and accommodations channeled through the office of the ADA/504 coordinator to minimize the possibility of confusion within individual departments or programs. The ADA/504 coordinator could also assume ongoing responsibility for coordination of knowledge and resources. If the tasks are centralized, the job will likely become full-time and may require additional staffing.

Appendix A Sample Administrative Policy Statement on the Role of the ADA Coordinator
[This is one possible approach for an administration to define the role of the ADA coordinator. See also Sample Policy Statements in Chapter 1.3.]

MEMORANDUM

TO: ALL EMPLOYEES

FROM: MARY SMITH, PRESIDENT

DATE: JANUARY 26, 1992

RE: APPOINTMENT OF THE ADA/504 COORDINATOR
AND ESTABLISHMENT OF TASK FORCE

In accordance with the requirements of the Americans with Disabilities Act and the regulations published by the U.S. Department of Justice, 28 C.F.R. § 35.107(a), Smith Community College is designating its ADA Coordinator. Sally James, Director of Personnel, shall be the person responsible for coordinating the college's efforts to comply with and carry out its responsibilities under the ADA. Ms. James will also be responsible for coordinating compliance under Section 504 of the Rehabilitation Act of 1973. In all publicity of the college's ADA efforts, Ms. James will be designated with the title "ADA/504 Coordinator."

Ms. James will chair the college's ADA Task Force, which will conduct the college's self-evaluation under Title II of the ADA. After the completion of that self-evaluation, Ms. James will continue to chair a committee to monitor the college's compliance efforts with the ADA and Section 504 and to ensure completion of all projects placed on the college's transition plan or approved by the Task Force. An Office of the ADA/504 Coordinator will be established and staffed at a later date to handle ongoing compliance issues.

The ADA Task Force will include senior administrators from the departments of finance, academic affairs, student affairs, and physical plant; Ms. James on behalf of personnel; and the college's legal counsel. In addition to its other responsibilities, the Task Force will develop and adopt appropriate grievance procedures for handling complaints under the ADA, integrated with the college's 504 Grievance Procedure.

The position of ADA/504 Coordinator will report directly to the President. The powers and duties of the ADA/504 Coordinator include the following:

1. Scheduling meetings of the Task Force
2. Developing subcommittees to advise and assist the Task Force in the ADA self-evaluation and its other activities
3. Distributing appropriate training materials to departments
4. Requiring completion of surveys of programs and activities by each department or program of the college
5. Requiring training of faculty and employees where the ADA/504 Coordinator deems it necessary
6. Determining, with the advice and consent of the task force, whether a change or expense would impose an undue burden or cause a fundamental alteration of a program of the college
7. Contracting with consultants or legal counsel as needed for completion of the self-evaluation and ADA compliance
8. Resolving all complaints under the ADA or Section 504 prior to the adoption of a written grievance procedure
9. Developing a plan for publicity of the college's grievance procedure and access to programs and services, and requiring all program and department heads to include model language in written materials

The task force will have the authority, subject to my approval, to change any policy, procedure, or practice it deems necessary to comply with the requirements or intent of the ADA. After the completion of the self-evaluation, the task force will discuss its recommendations with each affected department or program head. If the task force and a program head are unable to agree on the appropriate course of action, I will resolve the difference.

The Board of Trustees and I have previously made it clear that compliance with the ADA is an institutional priority. Each department or program head should provide full cooperation and assistance to the ADA coordinator and the task force in the completion of their responsibilities.

CHAPTER 4

PHASE II: SETTING PRIORITIES AND DEVELOPING A TRANSITION PLAN

The most important part of an institution's self-evaluation is Phase II--the process of determining what has to be changed to bring the institution into compliance with the ADA, setting institutional priorities, developing a transition plan for structural changes, preparing a plan for compliance, and budgeting. The process of analyzing the audits and surveys, setting priorities, and preparing a transition plan are addressed in this chapter; Chapter 5 discusses budgeting and the procedure for Phase III.

The most frequent mistakes made by entities and consultants analyzing ADA compliance under Title II or Title III are also the most expensive. These mistakes include:

- Confusing accessibility of programs, goods, or services with accessibility of physical structures

- Assuming that every physical element that does not meet the requirements of the new "building code" must be corrected in order to make the facility one that is accessible by persons with disabilities

The first mistake is a common one, especially for public entities, because the Title II regulations are somewhat vague, and neither the DOJ nor the DOEd have issued ADA regulations specific to higher education. Congress and the Department of Justice assumed some level of understanding of the meaning of "program access" as it was interpreted under Section 504. Private sector businesses applying the "readily achievable" standard for barrier removal under Title III usually have a better grasp of this concept because of the numerous examples of barrier removal and alternatives in the Title III regulations and guidance.

The second mistake frequently arises because architects, contractors, space planners, and others involved in facilities audits are used to dealing with building codes. They can easily identify what the relevant regulations define as an "accessible" new building or alteration--a building that complies with the ADA Accessibility Guidelines or the Uniform Federal Accessibility Standards. There is no similar definition in the regulations for existing facilities (e.g., no architectural standards for when a facility or a portion of a facility is so inaccessible that there is a barrier to program accessibility). Program access is a legal concept that can change case by case, not an architectural definition.

Some risk-adverse institutions and businesses have gone to the extreme, deciding that every facility that does not fully meet the new construction standards must be brought into total compliance with UFAS or ADAAG. This is not required by the ADA and is a waste of institutional resources. The purpose of Phase II of the self-evaluation is to avoid that extreme reaction while trying to ensure accessibility of programs and services. This process largely involves legal judgments as to what will likely be considered barriers to access, with input from persons with disabilities or experts regarding what are barriers versus items of inconvenience. This process also weighs the relative difficulty, cost, and risk of litigation of operational solutions and structural solutions. The entire process involves judgment calls as to what the law requires when there are few clear-cut rules.

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4.1 PROGRAM ACCESS VS. FACILITIES ACCESS

The key to understanding an institution's ADA obligations is the concept of "program access." Title II of the ADA requires that all programs, services, and activities of public colleges and universities be accessible to persons with disabilities. Title II's requirement of program access is patterned after and an extension of Section 504 of the Rehabilitation Act of 1973. The regulations and cases interpreting Section 504 provide guidance regarding the meaning of program access that will likely be followed under the ADA.

Many individuals wrongly perceive the ADA as a "wheelchair law" and assume the campus or facility is in compliance if it provides accessible parking, curb cuts, and ramps. This common mistake involves both a misunderstanding of the broad scope of the ADA's protections for persons with disabilities and a confusion of accessibility of services with the elimination of environmental barriers to wheelchair users. Program access is a concept far broader than physical access and encompasses:

- Barriers to entry into programs
- Discriminatory policies and procedures in the administration of programs
- Communication barriers that prevent full participation in programs or receipt of services

A campus could be brand-new with no physical barriers, and still fall short of providing program access if students who use wheelchairs were required to have attendants, service animals were prohibited from buildings, or theatrical events were scheduled with no opportunities for provision on request of interpreters for the deaf. At the same time, providing program access does not mean that every facility on a campus must be free of physical barriers. Public institutions are permitted to offer alternatives or use operational solutions so long as the program as a whole is accessible. The most common example is accessibility of classrooms or employee offices. If a qualified student who uses a wheelchair enrolls in a class that is scheduled in an inaccessible location (e.g., on the second floor of a building without an elevator), or if a qualified applicant with a mobility impairment is hired for a job with a department located in a historic building accessible solely by steps, program access could be provided by rescheduling the class for one semester to the first floor or to an accessible building, or by moving that department's operations to a different facility. Congress and the regulatory agencies recognize that public entities do not have to spend money to make structural renovations to existing facilities if, through some other means, those entities can ensure that all programs and services are accessible.

Public colleges and universities must make their programs accessible unless a change would result in a "fundamental alteration in the program or service" or cause an "undue financial or administrative burden." The removal of physical barriers may be one means to provide program access, but structural renovations are only required for public entities under Title II of the ADA if there is no other means available. An understanding of alternative means of providing program access is crucial during Phase II because the transition plan only needs to include structural renovations where there is no other way to remove barriers to program access. A Title II Transition Plan must include all structural renovations to physical facilities necessary to make programs and

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services accessible. Public institutions are given until January 1995 to complete those required physical renovations, unless doing so would be an undue financial or administrative burden in the context of all of the institution's resources. Because the undue burden standard is difficult to meet, institutions will want to investigate operational solutions to providing program access before placing facilities on the transition plan for renovation. Other methods of achieving program access include redesigning equipment, reassigning services to accessible buildings, assigning aides to beneficiaries, or delivering services at alternative accessible sites. In choosing a method of provide program access, the institution must give priority to the one that results in the most integrated setting appropriate to encourage interaction among all users, including individuals with disabilities.

The program access requirements of Title II for public institutions are different from the standards for removal of structural barriers by private colleges and universities. Under Title III, a private college or university must remove barriers whenever it is "readily achievable" to do so. The obligation to make readily achievable barrier removal is, according to the Department of Justice, a continuous one. Only when the removal of a physical barrier is not "readily achievable" (i.e., easily accomplished without much difficulty or expense) can a private institution look at alternative means of making goods and services accessible. Thus, private colleges and universities must spend money on barrier removal under Title III where it is readily achievable to remove barriers, while public colleges and universities can avoid spending funds on structural renovations if program access can be provided through other methods.

In theory, where barrier removal is not readily achievable, Title III would only require private colleges and universities to provide alternatives where those alternatives are "readily achievable." In reality, there are very few private colleges and universities who will be able to take advantage of this lower "readily achievable" standard, because virtually every private college or university receives some federal funds and is covered by the program access requirements of Section 504.

Accessible and Usable Facilities vs. a Barrier-Free Environment

A "barrier-free environment" is a facility that is built without barriers to persons with disabilities. A campus or a building that was built in compliance with the ADA Accessibility Guidelines or UFAS, or their predecessor standards, will likely have few barriers. Institutions will seldom have to make changes to provide access to such facilities to persons with mobility impairments, unless a particular individual's disability requires special modifications. (For example, an elevator in a new building that meets all applicable codes including the ADAAG might not be functionally accessible to and usable by a quadriplegic without the addition of a wand to assist the person in pushing elevator buttons).

A building constructed in the 1980s, while largely accessible, would not meet all of the standards of the ADAAG or UFAS. The definition of what constitutes a barrier-free environment has changed over the past 20 years. The development of new technologies and a better understanding of the needs of persons with various disabilities have resulted in changes in the criteria for accessible design since 1969. As one example, the ADAAG and UFAS now include provisions addressing communication barriers, including signage and assistive listening systems built into public address systems.

One commonly heard interpretation of the ADA is that an existing facility is not accessible to and usable by persons with disabilities unless it meets the standards of UFAS or the ADAAG. The basis for this interpretation is that the phrase "accessible to and usable by," which appears in Title II, is defined by the ATBCB in its regulations as a facility that meets the ADAAG. The authors believe this interpretation is overly restrictive and inconsistent with the intent of Congress and the regulatory agencies. Both the ADA and Section 504 recognize a concept of functional accessibility in existing facilities that is less stringent than the requirements for new construction. A facility can be "accessible" under Title II or Section 504 even if it does not comply with the ADAAG or UFAS Code.

Example: A public community college has a campus theater built in 1965 that was modified in 1977 after passage of Section 504. A properly graded ramp was added to a side entrance with signs at front entrances providing directions to the accessible entrance. The accessible side entrance was modified in size, with the doors changed to match the ANSI standard. The building was remodeled in 1985. As part of the mostly cosmetic changes, using some federal funds, public restrooms off the lobby were remodeled in accordance with the 1980 version of ANSI's accessibility standards.

This building would not meet the standards for new construction under UFAS or ADAAG. It does not have the required number of accessible entrances or exits required in new buildings; the accessible entrance is not the one ordinarily used by the rest of the public to enter the building; and there are differences between the standards for bathrooms in 1985 and those in the current codes. Nevertheless, the building is largely functionally accessible to and usable by persons who use wheelchairs. There is at least one accessible entrance that is well-marked; properly graded ramps are provided; the accessible entrance can also be used as an exit; and the bathrooms were considered accessible at the time they were built and are probably usable by most wheelchair users.

The major access issue for wheelchair users not previously addressed is the location of accessible seating within the theater. This may require some structural renovations, including relocating seats, to ensure access to seating that is not segregated. The back stage areas would also have to be made accessible to student performers with disabilities.

If the theatre has a mezzanine that is accessible only by stairs, the building would not comply if it were built in 1992 (because public institutions cannot use the elevator exception in the ADAAG), and not all seating is accessible. If diverse seating at various prices is provided on the first level to persons with mobility impairments or who use wheelchairs, the college would have a good argument that the program as a whole is accessible.

The earlier changes also failed to make the theater accessible to and usable by persons with vision or hearing impairments. There are some structural improvements that could be taken (e.g., additional signage for persons with visual impairments, a built-in assistive listening system, removal of obstructions to cane users, visual alarms), but there may be operational alternatives such as personal assistance. Even if all these structural changes were made, and the facility was "barrier free," the institution would still have obligations in making the programs offered in the theater accessible (e.g., through signers or alternative formats for written programs).

The concept of functional accessibility is not obvious on the face of Title II. However, it is a concept that has been recognized and applied by the Department of Justice and the Department of Education under Section 504. The Office of Civil Rights of the U.S. Department of Education has taken the position when conducting Section 504 compliance audits that facilities may be "partially accessible" if they have ground-level entry and one or more floors are accessible to students who use wheelchairs, sections or additions are accessible on one or more floors, or there is basic access to all floors and rooms but usability is limited by the absence of accessible support facilities such as modified bathrooms. The OCR permits program access to be provided through relocation of programs to such partially accessible facilities.

The Department of Education has also taken a broad view regarding accessibility of support facilities such as restrooms, telephones, water fountains, parking spaces, and signage. The Office of Civil Rights has said that generally the absence or inaccessibility of support facilities in any given building does not necessarily limit access to the program if effective alternatives are available (e.g., orientation instead of signage or raised numbers). For elements such as restrooms, parking spaces, and telephones, the OCR looks to whether sufficient numbers of these facilities exist that are reasonably convenient, usable in inclement weather, and appropriate to the use of the facility. In OCR's priorities, buildings such as dormitories, libraries, and student activity centers or entire academic departments should include some accessible restrooms, water fountains, and telephones. However, the DOEd has never required that every restroom in such a building be accessible. Thus, while the new construction guidelines require that every bathroom in a building be accessible, support facilities in existing facilities would be considered functionally accessible by the DOEd if there was one accessible unisex bathroom or one pair of accessible bathrooms located on a route that was accessible to wheelchair users (e.g., on the first floor) and could be reached from other floors through an elevator. Analysis of the DOJ Technical Assistance under Titles II and III, comments of representatives of the DOJ and OCR, and review of the ADA's legislative history confirms that it is not the intent of Congress or the agencies to force public and private entities to make existing facilities meet the standards for new construction in order for them to be "accessible."

Note: If structural renovations are made to achieve program access, then the architectural "elements" that are changed must comply with the ADAAG and/or UFAS. If a ramp is installed, it must meet the width, slope, handrail, and other requirements of ADAAG and UFAS. However, the widening of one entrance would not trigger an obligation to make all entrances accessible.

4.2 DEVELOPING THE TRANSITION PLAN FOR STRUCTURAL RENOVATIONS

The Department of Justice regulations provide that "in the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes." 28 C.F.R. § 35.151(d)(1).

Elements of the Plan

The DOJ regulations provide that the transition plan shall, at a minimum:

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities

(ii) Describe in detail the methods that will be used to make the facilities accessible

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section, and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition plan

(iv) Indicate the official responsible for implementation of the plan

28 C.F.R. § 35.151(d)(1).

Public Comment

The DOJ regulations require that each public institution provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan must be available for public inspection.

Deadline

When structural changes in facilities are necessary to provide program compliance, these changes shall be made within three years (i.e., on or before January 26, 1995), but in any event as expeditiously as possible. 28 C.F.R. § 35.151(c).

The Transition Plan and Program Access

The provisions for the transition plan are part of the regulations governing program access in existing facilities. The DOJ's commentary explains that this provision adopts the program access concept found in Section 504. Consistent with the position taken by the Department of Education under Section 504, "structural changes in existing facilities are required only when there is no other feasible way to make the public entity's program accessible." 56 Fed. Reg. 35709 (1991). If a program can be made accessible through operational methods, such as relocation or rescheduling, or the program as a whole is accessible to persons with disabilities, the facilities that house those programs do not need to be renovated or placed on the transition plan. The DOJ recognizes that there are many alternative methods of providing program access.

Carrying Individuals

The only method that the Department of Justice and the Department of Education will not consider an acceptable method of achieving program access is carrying an individual with a disability. The DOJ commentary states that "carrying is not permitted as an alternative to structural modifications such as installation of a ramp or a chair lift." The DOJ says carrying is only permitted in manifestly exceptional cases such as oceanographic vessels, where structural changes and devices necessary to adapt the facility for use by individuals with mobility impairments are unavailable or prohibitively expensive. Even then, the individuals who carry an individual with a disability must be formally instructed on the safest and least humiliating method of carrying. Thus, carrying an individual with a disability to seating in theaters, stadiums, or classrooms would not be considered an acceptable alternative for most structures on college campuses.

The authors strongly discourage carrying wheelchair users under any circumstances, because it is viewed by many as demeaning and there are serious liability issues (i.e., if a wheelchair user is dropped). If an access issue arises before the transition plan is complete, the situation should be explained to the person needing access, including the plan for renovations. The individual with a disability should then be consulted on the most appropriate interim method of access. Portable ramps, reassignment of seating, or other means may be acceptable short-term compromises without carrying the individual.

Non-Structural Changes

The DOJ's final rules eliminated a proposed 60-day transition period for non-structural changes, explaining that because Title II's effective date was 18 months after the ADA was passed, "no additional transition period for non-structural changes is necessary." 56 Fed. Reg. at 35710 (1991). It is the DOJ's position that even though the self-evaluation need not be complete until January 26, 1993, public entities were expected to be in compliance and have made all necessary non-structural changes (including changes in policies and procedures and the provision of auxiliary aids and services) when Title II took effect on January 26, 1992. Hundreds of complaints have already been filed against public entities.

What Must Go on the Transition Plan

Colleges that properly understand and apply the concepts of program access and functional accessibility will find that there are many existing facilities where program access can be provided without structural renovations. There are four types of facilities, however, that will usually require structural renovation:

- Buildings that should have been constructed in compliance with Section 504 and were not

- Facilities that are unique (i.e., only one of that type on campus) and are functionally inaccessible
- Facilities or portions of facilities that house programs that, as a practical matter, cannot be relocated
- Facilities that are partially accessible, but are not accessible to all persons with disabilities (e.g., persons with hearing or visual impairments)

Buildings that Should Have Complied with Section 504 or the Architectural Barriers Act

Any building built after 1969 with federal funds was required to have been built in compliance with federal accessibility standards under the Architectural Barriers Act (ABA) (See Chapter 8.1). In audits conducted by the Department of Education under Section 504, the DOEd generally assumes that all buildings built by any recipient of federal funds after 1977 should have complied with Section 504 and must meet high accessibility standards. As explained in Chapter 8.1, an institution may have a defense concerning buildings built between 1977 and 1988 if no federal funds were used in the construction of the facility and the programs that utilize the building are not recipients of federal funds, based upon the *Grove City* case.

If a building should have been built in compliance with the Architectural Barriers Act or Section 504, and was not, it could be very difficult to defend a Section 504 or ADA case regarding those facilities. These buildings should be at the top of the institution's transition plan.

Single-Use Facilities

The second priority on the transition plan should be buildings or portions of facilities that are unique or where it would be very difficult to reschedule events. Examples might include:

- Basketball courts
- Theaters or auditoriums
- Major lecture halls used for public lectures or events
- Observatories
- Some specialized laboratories
- Football stadiums

Facilities or Portions of Facilities Where It Would Be Extremely Difficult to Relocate

This list may include certain science laboratories, radio/TV studios, mechanical shops, and other facilities where relocation to provide access for a student during a particular semester would be impractical or unduly expensive because of built-in equipment.

Facilities that Are Not Functionally Accessible to All Persons with Disabilities

Many facilities may be wheelchair accessible but were never designed or renovated with accessible features for persons with vision or hearing impairments. Barriers may include protruding objects, lack of signage, no visual alarms, and no provision of other auxiliary aids.

Types of Structural Renovations that Are Necessary

The transition plan does not need to make every facility that is wholly or partially inaccessible comply with the new codes (ADAAG or UFAS). Institutions are only required to remove functional barriers and make the renovations that are necessary to bring the building up to a level that provides program access. In evaluating whether a structural element that is not consistent with the code is a barrier to access or merely an inconvenience item, institutions should consult with individuals and groups representing individuals with disabilities, as well as experts in barrier-free design. Examples of functional barriers might include:

- No or insufficient accessible parking to meet demand, or no van-accessible spaces or no access aisles
- Significant barriers along accessible routes around campus
- No elevator in facilities leading to spaces where programs cannot be relocated
- Exterior or interior ramps that are too steep and pose a danger
- No accessible entrances to a facility
- No signage at inaccessible entrances
- The accessible entrance is too difficult to open or has improper door handles
- No wheelchair seating in a facility, or the accessible seating is segregated, or does not provide the same view or prices as other seating (e.g., is only available at the back of theaters)
- Visual alarms are lacking in a facility
- No accessible bathrooms or accessible bathrooms are not reasonably convenient in a facility
- The absence of signage makes the building inaccessible to persons with visual impairments

A Procedure for Creating the Transition Plan

To create the transition plan, the task force should follow this analysis during Phase II of the self-evaluation, using the data collected during Phase I.

(1) Is there a facility that should have been built in compliance with the ABA or Section 504 and, if it was not, what aspects of the facility do not comply?

(2) Are there facilities that are partially or wholly inaccessible to some or all persons with disabilities, based upon a review of functional accessibility of each facility of the institution (on- and off-campus)?

(3) Are there alternatives that could make programs located in those facilities accessible, such as:

- relocation to accessible spaces
- assignment of personal aides or provision of other assistance
- reasonably convenient support facilities in other locations

If so, is there a plan to accommodate such reassignments, and are the affected department or program heads willing to accept this plan?

(4) What are the short-term and long-term costs of operational solutions, e.g., the cost of moving departments or equipment maintenance of outdated elevators. (Structural renovations amortized over several years may be less expensive than the alternatives.)

(5) If alternatives are not effective and structural renovation is required, or structural solutions are more cost-effective, what are the minimal structural renovations needed to make programs in those facilities accessible to persons with disabilities?

Examples:

- At least one accessible entrance
- At least one accessible unisex bathroom or pair of bathrooms
- Visual alarms in certain dormitory rooms designated as accessible for students with hearing impairment
- Addition of curb cuts and properly graded ramps leading to at least one accessible entrance

- A sufficient number of accessible parking spaces to meet demands of students, employees, and visitors

The elements identified in Step 5 are the structural renovations that must be included on the transition plan and must be completed before January 26, 1995. After the task force has developed its preliminary transition plan, it should make the plan available to interested members of the public and review all comments on the plan.

Updating the Transition Plan After Completion of the Audit

Some institutions may have completed preliminary transition plans before the July 26, 1992 deadline. The self-evaluation may lead to a conclusion that some elements were omitted that should be included, such as visual alarms, and that some facilities slated for renovation are not required to be included on the transition plan. If so, the transition plan should be revised at the completion of the self-evaluation.

Institutions may choose to make it a goal to complete structural renovations to provide greater access than required under the ADA, but those proposals should not be part of the institution's transition plan. Courts and juries may well strictly construe the requirement that all structural renovations on the transition plan must be completed by January 1995. Because of the difficulties involved in asserting a claim of undue burden or undue hardship, institutions should only include on the transition plan those structural renovations that they believe are absolutely necessary and can be achieved.

4.3 COMPLETING THE SELF-EVALUATION: IDENTIFYING PROBLEMS AND SETTING CAMPUSWIDE PRIORITIES

Development of the transition plan for structural renovations is only part of the job of the task force during Phase II of the self-evaluation. Analyzing the audits done by various departments and programs to determine if there are other areas where changes are needed to bring the institution into compliance with the ADA is equally important. Few institutions will have unlimited funds available for ADA compliance, so the task force will need to make judgments regarding changes that are necessary under the law and those that, while desirable, will have to take a low priority. The task force will also have to set priorities and goals for the institution to achieve the greatest degree of access and minimize the risk of litigation with available resources.

The Department of Justice has not given any priority lists for Title II. Institutions are already expected to be in compliance in all areas except non-structural renovations, unless a change in policies or procedures is an undue burden or a fundamental alteration. In the absence of a specific complaint or lawsuit, we recommend that resources and efforts during 1992 and 1993 be allocated in accordance with the following priorities:

I. Personnel/Employment

The best way to minimize the risk of litigation in the employment area is to make managers and supervisors aware of their obligations and to identify issues as soon as possible. The employment priorities involve more time and commitment than they do expense. The priorities should be:

A. Establishing a budget for reasonable accommodations for employees

B. Training managers in their obligations under the ADA

C. Establishing and circulating a reasonable accommodation policy to all supervisors

D. Requiring managers to review proposed adverse hiring and discharge decisions involving individuals with disabilities with the human resources/personnel department before these decisions are final

E. Ensuring that essential functions are defined through updated job descriptions before a job is posted or advertised or promotions are made

II. Program Access Priorities

Complaints and lawsuits involving program access can best be avoided through efforts to make it known that the college is committed to providing program accessibility, procedures to address requests for accommodations, and an internal grievance and complaint procedure. These are all specifically required under Title II. The priorities should be:

A. Establishing a budget for auxiliary aids and services for students, including modifications for students with learning impairments;

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B. Publicity, through student handbooks, brochures, letters to members of the community, and announcements of every sponsored activity, of the institution's commitment to providing accessibility, identification of the person to contact to make requests for accessible services or auxiliary aids, and the name and phone number of the campus ADA coordinator (if different);

C. Establishment and publicity of a grievance procedure for program access problems. The complaint procedure must be publicized to all beneficiaries, including students, visitors, and members of the general public. This should be done through inclusion on advertisements of college-sponsored programs; and

D. Identification of accessible facilities and procedures. This may include a campus map marking accessible features and the offices to contact for assistance, distributed to all areas where visitors may seek information or assistance.

III. Communication Priorities

There is no transition period on the provision of auxiliary aids and services. The greatest degree of protection can be obtained from designating individuals familiar with auxiliary aids and services to remove communication barriers and from removing physical barriers where feasible. Many buildings will be accessible to persons who use wheelchairs but are not accessible to persons with visual or hearing impairments. Recommended priorities are:

A. Development of the ability to produce or provide alternative formats or information on how to provide auxiliary aids and services. If this capability is not developed in every department or program (e.g., assistive listening devices or systems in every theater or department that sponsors lectures, methods for producing brochures in alternative formats such as braille, tape, or disk in each department), then there should be a centralized resource person on communication technologies who can promptly respond to requests from individuals, departments, or programs and who is aware of all the assistive equipment on campus or available within the community and how to locate qualified interpreters.

B. Required signage (e.g., designating non-accessible entrances). Schools may wish to look at the new construction standards for guidelines on major buildings that will be open to the public or to students or employees with visual impairments.

C. Telephone systems. Upgrading telephone systems to make them hearing-aid compatible, adding amplified phones, and making some pay phones suitable for TDDs can usually be done at low cost or no cost through the contract with vendors.

D. Classrooms. In most cases, institutions will be accustomed to providing auxiliary aids and services for students in the classroom. If not, academic departments need to be aware of their obligations. Structural renovations to add assistive listening systems to major classrooms and lecture halls should be a long-term priority, but other methods can provide access in the short term.

E. Non-academic areas and programs. Most communication problems in non-academic areas and student services can be addressed case by case with students. The exception is large group events that involve visitors to campus.

IV. Facilities Priorities

A. New construction and alterations. The first priority should be ensuring that all new buildings and all planned renovations comply with the ADAAG or UFAS and that the capital improvements budget is based upon cost estimates in compliance with those codes.

B. Transition Plan. As noted above, the transition plan will encompass all structural barriers to access. Beyond the transition plan, priorities should be based upon removing structural barriers over time rather than confronting them when a specific need arises.

C. Future student issues. An institution that is meeting the needs of its existing student population would not have to make any facilities modifications to provide program access. However, there are some capital improvements for access that should be planned for in advance of a request. Examples may include upgrading the library; adding accessible student housing for students with mobility impairments, hearing impairments, or vision impairments; and expanding the number of facilities in which accessible programs can be located. While it may currently be possible to rearrange classes into three or four accessible buildings, this could become more difficult if the population of students with mobility impairments increased.

D. Inexpensive barrier removal. There may be visible, low-cost means of removing barriers even if this is not absolutely required as part of the transition plan. Examples might include adding paper cup dispensers next to water fountains, restriping parking lots, adding curb cuts, and placing signage designating accessible areas and accessible routes.

E. Future employee issues. Visual alarms are a priority for existing employees or students with hearing impairments in areas where they work alone. For other areas, visual alarms should be a longer-term priority as a life safety matter.

The placement of facilities modifications last is intentional. There will often be many alternatives to providing program access that do not involve structural renovations. More importantly, individuals with mobility impairments are only a small percentage of all persons with disabilities. There are less than one million wheelchair users in the United States. This must be contrasted with 24 million individuals with hearing impairments (of which approximately two million are deaf), four million individuals with serious vision impairments (of which one million are blind), and millions of other individuals who may need accommodations of various disabilities, including those with learning impairments.

Physical barriers to persons with mobility impairments are important if they have not previously been addressed and if there are active individuals or groups in the community who want these to be a priority. A higher percentage of lawsuits, however, are likely to come from employees on workers' compensation, students with learning disabilities, members of the public who are not provided auxiliary aids and services, and any individual who asks for accommodations and is ignored or refused service by persons who are not trained in how to respond to such requests. **THE ADA IS A LAW WHERE AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE.**

CHAPTER 5

PHASE III: BUDGET CONSIDERATIONS AND ENSURING COMPLIANCE

Budget considerations are part of Phase II and Phase III of the self-evaluation. Once the task force determines what policies and procedures must be changed, the desired priorities for bringing the institution into compliance, and what structural renovations must be completed, it faces the question of how to pay for ADA compliance. In most cases this will be a three-step process:

Step 1: Determine the cost of the various proposals on the priority list and transition plan

Step 2: Determine the available resources or the budget that will be sought from the state for ADA compliance during 1992 to 1995

Step 3: Allocate the resources available or that become available through budget requests to the items on the priority list

Budgetary considerations may cause a readjustment in priorities. For example, the absence of funds for capital improvements during 1992 and 1993 may push certain items on the transition plan to a lower priority. Important life safety issues, such as visual alarms, might be postponed in some cases due to existing contracts that preclude competitive bidding.

All policies and procedures that the task force determines violate the ADA must be corrected unless compliance would cause a fundamental alteration of a program or service or result in an undue financial or administrative burden to the institution. Chapter 5.1 discusses the concept of "undue burden." Each institution's task force needs to decide whether it will assert a defense of financial undue burden and, if so, what level of resources would not constitute a financial undue burden. That amount will be the maximum size of the ADA budget. Chapter 5.2 is a sample list of some components of an ADA budget. Chapter 5.3 explains why the ADA budget should be administered on an institutional level.

After priorities have been set and resources allocated, the institution can move to Phase III, the follow-through to ensure compliance. The task force's role during Phase III should be the oversight of compliance efforts, with periodic monitoring. Phase III is discussed in Chapter 5.4.

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5.1 DETERMINING WHAT IS AN UNDUE BURDEN

Title II of the ADA does not require a public entity to take any action that the entity can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or that would constitute an undue financial or administrative burden. The undue burden standard also appears in Title III and Section 504. The question of whether a change in policies, procedures, or practices would result in a "fundamental alteration of a program or activity" as that concept has been defined by the courts, especially in academic areas, is beyond the scope of this manual. A brief discussion appears in Chapter 7.1. This chapter focuses on the defense of undue burden.

The Department of Justice regulations state that a public entity that wishes to raise a defense of "undue financial or administrative burden" has the burden of proof on this issue. The regulations specifically provide that a decision that compliance would result in a fundamental alteration or undue burden must:

- Be made by the head of the public entity (i.e., president or chancellor) or his or her designee
- Consider all resources available for use in funding and operation of the service, program, or activity
- Be accompanied by a written statement of the reasons for reaching that conclusion

28 C.F.R. § 35.164.

The Department of Justice says that the intent of its regulations is that a decision to assert the undue burden defense must be made by a high-level official, no lower than a department head, having budgetary authority and responsibility for making spending decisions. Few department chairs or program officers at institutions of higher education would fit this definition. Institutions should realize that the person who makes the decision could be called upon in court to defend the decision.

The determination that a particular change would be an undue financial or administrative burden does not eliminate an entity's obligations under Title II. The Title II regulations impose an obligation similar to that under Title I for accommodations that would be an undue hardship—the entity is still required to take actions that would not result in a fundamental alteration or impose such burdens but would ensure, to the maximum extent possible, that individuals with disabilities receive the benefits or services provided by the college or university.

The Department of Justice takes the position in its commentary to the final regulations that compliance with the ADA will seldom impose undue financial or administrative burdens on a public entity. It is possible that the DOJ is suggesting that ADA compliance will not be costly. Many schools are finding this is not true. Another interpretation, consistent with the DOJ's guidance in Title III, is that undue burden will not be an easy standard to prove.

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What Are "Available Resources"?

The DOJ's position is that all resources of a public entity available for use in funding the particular service, program, or activity should be considered. It is unclear how this rule will be applied to higher education institutions. There is no definition of the term "undue burden" in Title II and no further explanation in the regulations of what resources can be considered available to public entities. In the absence of any further definition, it is possible the courts will look to the definition of the same term under Title III (which applies to auxiliary aids and services) and to the term "undue hardship" in Title I (the limitation on reasonable accommodations for employees). The legislative history of Title III reveals that "undue burden" takes into account the same factors as "undue hardship" in Title I.

The term "undue hardship" is defined in Title I of the ADA as an action requiring significant difficulty or expense when considered in light of the following factors:

- The nature and cost of the accommodation
- The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expense and resources or the impact otherwise of such an accommodation upon the operation of the facility
- The overall financial resources of the covered entity; the overall size of the business of the covered entity with respect to the number of its employees; the number, type, and location of facilities
- The type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity; the geographic separateness, administrative or physical relationship of the facility or facilities in question to the covered entity

There is little case law under Section 504 analyzing what is an undue financial or administrative burden. Each agency providing federal financial assistance promulgated its own regulations under Section 504. The Department of Education regulations do not use the phrase "undue burden," and the term "undue hardship" appears only in the context of reasonable accommodations for employees. The language in Title II tracks the Section 504 regulations promulgated by the Department of Justice. In *Southeastern Community College v. Davis*, the Supreme Court said that Section 504 did not require any agency to engage in any action that would result in a fundamental alteration or substantial modification. This standard was not part of the Department of Education regulations; it was added by the court. The Supreme Court did not address cost issues or financial burdens. One commentator has suggested that program access must be provided under Section 504 without regard to cost. These issues are likely to be developed in future cases that raise ADA and Section 504 claims.

To the extent that courts applying the undue burden standard of Title II follow the Section 504 cases interpreting undue hardship, they could consider all of the resources available to the institution. In the case of community college systems or state university systems with joint budgeting, plaintiffs will contend the courts should look to the resources available to the entire system. Plaintiffs will also argue that the courts should look not only to the general budget available to public institutions, but to any other sources of funds. For example, money available through a private athletic foundation for athletic scholarships and programs or gifts directed at specific programs or schools may not be available for other programs or services of a college. Plaintiffs will argue, however, that the availability of these funds is taken into account in institutional budgeting and frees up other resources that can be used to provide program access.

There is no simple percentage test for what is and is not an undue hardship or an undue burden. Congress rejected an amendment that would have provided that any accommodation for an employee in excess of 10 percent of the salary of that employee was an undue hardship. Some plaintiffs will argue that this is evidence that expenditures less than 10 percent of an employee's salary are not an undue hardship. The EEOC's position is that the defeat of this amendment was an express rejection of any proportionality between the value of the job and cost of the accommodation.

Juries and the Undue Burden Standard

There are substantial risks to entities, public or private, that wish to raise the defense that "it costs too much." According to the Department of Justice, undue burden is an affirmative defense that must be proven by the institution. Public and private institutions that raise the defense of undue financial burden face the possibility of having to disclose substantial information about their budgets. Information about an institution's budget and resources may sometimes be considered confidential and proprietary for private institutions, but rarely for public institutions. Plaintiffs' attorneys in ADA/Section 504 cases where undue financial burden is raised as a defense will argue that they can get access to details about an entire institution's budget. Plaintiffs' attorneys will contend that they can make arguments to the jury regarding "where the institution elected to spend its funds other than on access for persons with disabilities." Recent publicity surrounding "overhead expenses" of some private universities included in government contracts indicates some "expenses" that could be brought before a jury (e.g., renovations of the president's house, entertainment for visiting lecturers, faculty parties, yachts, and conferences at exotic locations).

A simpler approach that may be taken by some plaintiffs' attorneys is simply to contrast requests for accommodation with the budget for particular programs. In one recent case involving the University of Alabama, an expense of $15,000 was viewed as not unreasonable by the court in the context of a transportation budget of $1.2 million. Higher education institutions could face plaintiffs' arguments that 10 percent of a capital improvements budget is not unreasonable for physical renovation or that all capital improvements should be postponed several years until existing facilities are made accessible to persons with disabilities.

In employment cases, these issues are likely to be resolved by juries. It is possible juries may be available in Title II and Section 504 cases. Even if the case is heard by a court and not a jury, institutions will want to avoid defenses based upon undue financial burden that could result in complicated defense of the institution's budgetary priorities and processes. Other defenses should be considered first, including lack of qualification to perform essential job functions, direct threat, alternative means of providing program access, fundamental alteration, and undue administrative burdens imposed by the change.

5.2 COMPONENTS OF THE ADA BUDGET

A Department of Education official conducting a Section 504 compliance audit might accept as a defense that "it wasn't planned for in the budget;" most plaintiffs will not. Because of the risks and difficulties associated with raising undue burden as a defense (See Chapter 5.1), higher education institutions will want to try to plan for all possible ADA-related expenses and include them in their budgets for 1992 and beyond.

The following is a list of possible expenses that will result from the ADA. It is by no means inclusive. The range of expenses that may be required of an institution will be clarified as a result of the Phase I audits and the Phase II analysis. This list should be viewed as a starting point by budget and finance officers.

I. ORGANIZATIONWIDE—TITLE II AND III COORDINATION AND COMPLIANCE

A. Major personnel costs for:

1. ADA institutional coordinator
2. ADA specialist-personnel
3. ADA specialist-facilities
4. ADA specialist-programs (may also be EEO coordinator)

The role of an ADA campus coordinator, if done correctly, could easily be a full-time job through mid-1993. Depending on the size of the institution and the degree of centralization of requests for accommodations, ADA compliance could require one to three new positions.

B. Staff time and support for:

1. Preparing ADA audits, self-evaluations, and compliance plans
2. Coordinating compliance
3. Obtaining, preparing, and distributing materials on Title II and III obligations

C. Expenses associated with audits conducted by departmental personnel

D. Expenses associated with outside consultants, if any, to assist or review development of compliance plans, including:

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1. Legal counsel during Phase II

2. Architects to advise on structural barriers

II. HUMAN RESOURCES BUDGET

A. Additional staff time to conduct audits of policies, procedures, and hiring practices

B. Costs associated with revising and redistributing job descriptions and policy manuals, including:

1. Additional staff in classification to review and revise position descriptions or class specifications

2. Copying or reprinting job applications, employment questionnaires, revisions to employee handbooks, policies and procedures manuals, and other documents

3. Expenses for training personnel managers and all persons involved in hiring in the new pre-employment procedures

C. Expenses associated with working with medical doctors in redesigning pre-employment physical examinations and pre-employment inquiries in compliance with the ADA

D. Costs for ongoing consultation with medical personnel/medical review officer on accommodations, workers' compensation, direct threat, and other issues

E. Costs for outside consultants on benefits issues

F. Costs for training human resource or other managers on ADA employment issues. Training costs may include:

1. Per person costs and expenses for outside training or conferences

2. The costs of preparing and administering on-site training

3. Obtaining and duplicating ADA training materials

G. Costs for legal counsel to consult on proposed job actions

III. PERSONNEL COSTS FOR REASONABLE ACCOMMODATIONS

A. Hiring Expenses

1. Hiring and/or paying for qualified interpreters to communicate with, or interview, hearing-impaired job applicants

2. Additional time required of existing employees to accommodate visually impaired job applicants by assisting them through the application process or to making application forms readable by such applicants

3. The cost of relocating personnel offices to accessible locations

4. Modifications of pre-employment tests to ensure their accuracy for persons with disabilities

5. Higher costs if pre-employment tests must be modified or changed

6. Possible increased costs for pre-employment medical exams

B. Training/Orientation Costs

1. Modifying employee handbooks for visually impaired employees

2. Providing alternative training methods for visually impaired employees instead of films or videotape

3. Modifying films or videotapes to add open- or closed-captioning for the hearing-impaired or providing an interpreter or written materials

C. Reasonable Accommodation of Existing Employees

1. Providing reasonable accommodations by modifying equipment or purchasing auxiliary aids for existing employees where this has not previously been done due to lack of employee awareness or absence of legal obligation

2. Particular accommodations that may be more common under the ADA include ergonomic redesign of secretarial work stations to prevent or correct repetitive motion disabilities and modification of seating, equipment, or vehicles

3. Possible increased insurance costs where existing disabled employees are added to policies

IV. FACILITY MODIFICATION/TRANSITION PLAN/PHYSICAL PLANT EXPENSES

A. Making all non-work areas (e.g., lounges, coffee areas, restrooms, cafeterias) accessible to any currently disabled employees (especially wheelchair-using employees) or newly hired disabled employees

B. Making any readily achievable modifications to remove barriers, which could include:

1. Redrawing accessible parking spaces in accordance with ADAAG guidelines

    2. Widening entrances
    3. Installing flashing alarm signals to supplement audible emergency alarms
    4. Many others

C. Increased maintenance budgets to maintain accessible features (e.g., elevators) in working order

D. Structural renovations on the transition plan for public entities, including all renovations needed by January 26, 1995 to provide program access

V. PROGRAM ACCESSIBILITY COSTS

A. Obtaining and providing auxiliary aids and services or alternatives for students for use in academic programs.

B. Providing necessary aids and services for students or visitors in non-academic areas including:

    1. Cafeterias
    2. Dormitories
    3. Theaters
    4. Stadiums
    5. Health and recreation areas
    6. Student unions
    7. Club and organization activities

C. Costs for providing written materials in alternative formats when requested by persons with visual impairments, or converting soundtracks and oral materials into formats accessible to persons with hearing impairments. These could range from graduation programs to the college catalogue.

D. The costs, if any, associated with lost employee time or the need to hire additional employees to provide assistance to students and visitors who need accommodations.

E. Training employees how to interact with and accommodate students or visitors with disabilities.

F. Training faculty in handling requests for accommodations from students.

VI. NEW CONSTRUCTION OR FACILITIES' ALTERATION BUDGETS

A. The Department of Justice estimates that ADA accessibility will add:

1. Anywhere from $^1/_2$ to 1 percent to the cost of all new construction projects
2. One to 3 percent to the costs of all alteration or remodeling projects

These estimates do not include:

- Up to 20 percent of the cost of the alteration project that must be spent to create an accessible path of travel if the alteration is of an area containing a primary function

If the budgets for new facilities and alterations are being made based upon completed projects with a built-in inflation factor, those estimates will have to be adjusted upward for the additional costs of ADA compliance.

B. Construction and alteration costs will be even higher if projects that will be covered by the ADA are already in the design and planning stage. Architects and/or engineers also may incur expenses for redesigning projects.

VII. LANDLORD/TENANT

A. Increased costs associated with identifying accessible offices or other facilities off-campus

B. Higher rents, if any, associated with newer accessible buildings

VIII. LEGAL

A. Lease Review. If landlord/tenant matters are not handled in-house, there may be legal expenses incurred through the review of existing leases and redesign or renegotiation of future leases to deal with ADA compliance costs.

B. Litigation Budgets. The EEOC is expecting a 15 to 20 percent increase in its workload as a result of disability charges. If processing or defense of EEO charges is handled either by in-house counsel or human resource personnel, their workload will likely increase. If outside counsel is routinely called upon to advise on EEO matters, the budget for outside legal expenses should be increased accordingly.

The passage of the Civil Rights Act of 1991 will increase the prospect that disabled applicants or employees may challenge adverse job actions, with the attendant litigation costs.

The expansion of remedies under the Rehabilitation Act will increase the prospect that students and visitors will sue in ADA/Section 504 actions.

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Because each ADA claim will likely raise novel issues not previously addressed by the courts, institutions may wish to make use of specialized ADA counsel in addition to usual employment counsel.

C. Workers' Compensation Claims. There is no accurate way to determine whether the EEOC's restrictions on using workers' compensation history as a screening criterion will result in more costly workers' compensation claims. This is not a matter that is likely to increase immediately in 1992, but it should be evaluated for 1993 budgets if your current employment practices have routinely screened persons from employment based on a history of workers' compensation claims or past injuries.

D. Administrative Expenses. There may be higher administrative and legal expenses associated with new confidentiality procedures, filing (maintenance of separate medical records), and other recordkeeping requirements.

E. ADA Legal Counsel. Legal counsel familiar with the ADA may be necessary at various stages, including Phase II of the self-evaluation, and for periodic advice on proposed accommodations and resolution of claims.

IX. PUBLICITY

A. Costs associated with publicizing the transition plan and self-evaluation

B. Costs associated with publication of information regarding ADA compliance and grievance procedures in brochures, handbooks, and other materials provided by the college to the general public

X. RESERVE FUND

A. Reserve funds should include funds for reasonable accommodations and auxiliary aids and services that have not otherwise been budgeted (See Chapter 5.3).

5.3 DEPARTMENTAL vs. COLLEGEWIDE BUDGETING

Most institutions will decide that requests for reasonable accommodations and auxiliary aids and services to employees, students, and program beneficiaries should be initially addressed by a level of each department or program. Department and program heads are best situated to analyze alternative means of providing program access if they properly understand their obligations under the law and have access to resources and expertise. Budgeting is a different matter. Budgeting for ADA compliance should largely be handled on an institutional basis, for three reasons:

- A department or program head that has to pay for reasonable accommodations out of his or her own budget has a strong disincentive for doing so.
- Decisions regarding undue burden must be made with consideration of all the institution's resources; this should not be done on a departmental basis.
- Institutional budgeting ensures that resources are not spent unnecessarily, such as purchasing auxiliary aids and services for a particular program when they are available elsewhere on campus or renovating a department's offices under the guise of ADA compliance.

Institutionwide budgeting for ADA compliance has a number of other benefits. Centralized budgeting provides easy access to information about expenditures if a claim is filed against the institution. One of the best defenses to any ADA claim or charge is to show all the institution's efforts and expenditures on access. Centralized budgeting also ensures that compliance is handled in accordance with the priorities set by the task force.

Institutions should strongly consider including a reserve fund in the budget that is not allocated to specific accommodations or services. This reserve fund should be permitted to grow if it is not needed to respond to requests in a particular fiscal year, and it should be saved for unusual requests. If at some later date a particular employee needed access to a building without an elevator and the program could not be relocated, the cost of such a major, unanticipated expense could be paid from the reserve fund without impacting other budgets.

The major purpose of the reserve fund, however, is for litigation avoidance. There is one priority that will usually supersede all other priorities devised by the task force--requests made by an individual threatening to file or who files a complaint or lawsuit under the ADA. In some cases the institution may fight as a matter of principle. In other cases, the best deterrent to litigation is to make sure that the squeaky wheel gets the grease. The task force's decision to make a particular expense an item in the following year's budget, or to use some other means of providing program access, may be of little benefit when facing adverse publicity or lawsuits. The reserve fund can be used to provide accommodations beyond what the college believes is necessary if doing so will avoid litigation.

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5.4 PHASE III: IMPLEMENTING THE PLAN AND ENSURING COMPLIANCE

The final stage of the self-evaluation is implementing the plan and ensuring compliance. Many institutions prepared transition plans and conducted self-evaluations under Section 504; far fewer completed all of the items on those plans. Each institution must provide a mechanism for ensuring that:

- ADA compliance continues to be a priority
- Departments and program heads follow through on their commitments
- Grievances are handled appropriately
- ADA items are included in budgets until all elements of the transition plan are complete and sufficient funds have been set aside for program access needs

The authors recommend that the task force continue in existence after preparation of the transition plan and meet periodically to monitor compliance efforts. The role of the ADA coordinator during the first half of 1993, after completion of the self- evaluation, should be monitoring compliance efforts. The ADA coordinator should be assisted by appropriate staff and support from the task force.

Phase II will involve close work with legal counsel to decide what is and is not necessary to comply with the ADA. Phase III may involve coordination with architects and space planners to devise lower-cost means of providing barrier removal, issuing RFPs, negotiating contracts, and other matters. These tasks will often be delegated to the physical plant department. The ADA coordinator may wish to work with one or more consultants or architects familiar with barrier-free design to ensure that ADA renovation projects are completed properly.

Institutions can be sued at any time for their failure to provide program access. If an institution is going to make changes over time other than the items on the transition plan, its schedule for doing so should be the most expeditious possible. An institution can show good faith in response to a complaint or OCR audit if it can show a strict timetable that has been monitored and followed for completion of various projects.

It cannot be overemphasized that the DOJ takes the position that there is no transition plan for nonstructural alterations, changes in policies and procedures, or the provision of auxiliary aids and services and that all public and private institutions should have been in compliance on January 26, 1992. Any institution that is working on compliance after completion of its self-evaluation should make monitoring of compliance deadlines a significant priority.

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CHAPTER 6

CONDUCTING AN EMPLOYMENT AUDIT (TITLES I AND II)

The ADA imposes many requirements on employers, some of which are only vaguely defined. The ADA reaches every aspect of employment, including hiring, compensation, job assignments, leaves of absence, fringe benefits, and even social and recreational programs. Many situations can only be determined on a case-by-case basis. There are, however, a number of areas in which the statute and the EEOC regulations have provided specific examples of employment policies, procedures, and practices that violate the ADA. Although the material in this chapter summarizes some of the principles relevant to audits, it is not a substitute for a detailed review of the ADA's employment provisions that are available in other publications (See Chapter 2.4 for a list of resources).

Human resources/personnel departments that are just starting their ADA compliance efforts, or are attempting to conduct audits and modify policies and procedures with limited staff and resources, may need to prioritize their efforts. The priorities and schedule of tasks outlined in Chapter 6.1 is one approach, which may need to be revised based upon the institution's size, existing efforts, hiring needs, and the number of persons with disabilities in the workforce. The substantive audits in Chapters 6.2 and 6.3 cover all areas of hiring and employment policies and procedures. The final two chapters, 6.4 and 6.5, address some of the special issues involving student employees and faculty.

In auditing employment practices to see if they comply with the ADA and in training managers on the ADA's requirements, employers may wish to focus their attention on several areas:

(1) Some decisions are more likely to lead to large damages if a lawsuit results. These include refusals to hire and discharges (both of which have the potential for large back pay awards and are harder to reverse than other decisions), harassment by supervisors or co-workers (which can lead to awards for intentional infliction of emotional distress), and demotions (which frequently lead to constructive discharge, harassment, or retaliation claims).

(2) Hiring decisions will likely be a greater area of exposure under the ADA than under other discrimination laws if the institution is hiring. When Title VII was first enacted, most lawsuits involved barriers in hiring; now they usually involve promotions and discharges.

Employers that are not hiring because of the economy do not have to make hiring issues a priority; they have a complete defense. As hiring improves, decisions to reject disabled applicants trying to enter the work force could receive significant scrutiny. "Testers" will likely target employers advertising good entry-level positions.

(3) Personnel practices on which the EEOC has rendered specific regulations or guidance, including medical examinations and questionnaires, will be a "red

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flag" if a rejected applicant or discharged employee files a charge of discrimination. The EEOC is more likely to file suit or issue "probable cause" findings on clear-cut issues than on the ambiguous areas of the law.

(4) Any failure or refusal to "reasonably accommodate" an employee who becomes disabled, or the application of leave, attendance, transfer, or other policies to such employees, will be a target for challenge if it results in a discharge.

For the purposes of the ADA, every employee of the institution is covered. This includes student employees (see Chapter 6.4) and temporary employees, if they receive compensation from the institution. A college has no obligations to independent contractors or the employees of vendors/subcontractors, unless there is a joint employer relationship.

6.1 AUDIT AND COMPLIANCE PRIORITIES FOR HUMAN RESOURCE PERSONNEL

I. Coordination

A. Identifying Personnel Responsible for Title I

Employers should, if they have not already done so, designate the personnel who will be responsible for the implementation of the ADA. There can be a separate ADA coordinator for employment (See Chapter 3.3). These individuals should be receiving in-depth training (e.g., literature, seminars, etc.) regarding the ADA.

B. Collective Bargaining Issues

Each institution must determine whether it has any collective bargaining agreements that are being negotiated during the next year or has negotiated collective bargaining agreements since Title I was signed into law on July 26, 1990. If so, was the ADA and its impact on personnel issues, such as light duty, reassignment, and job restructuring, taken into consideration during negotiations? Have labor relations personnel involved in negotiations or contract administration been made aware of the scope and implications of the ADA and developed a strategy for dealing with conflicts between the ADA and the collective bargaining agreement?

There are many areas where the ADA may conflict with the National Labor Relations Act (NLRA), state laws on public sector bargaining, or the terms of collective bargaining agreements. Several prominent union leaders have publicly expressed concern about these potential conflicts. Labor relations personnel need to understand their institution's obligations under the ADA and take them into account during negotiations and contract administration. (See IMRA ADA Manual Chapter 2.5; NLRB General Counsel's Memorandum GC 92-9, August 7, 1992 on the ADA; *Daily Labor Report* (BNA), Aug. 14, 1992 at E-1.)

C. Work with Title II Coordinator or Task Force

Human resources/personnel staff need to be involved with implementation of Title II compliance. Issues for human resource involvement include:

(1) Completion of the employment portion of the Title II audit before January 26, 1992 for public institutions

(2) Employee training to deal with disabled students

(3) Long-term accommodation issues in new construction and alterations

II. Reasonable Accommodation Policy or Procedure

A. Establish a Policy on Processing Requests for Reasonable Accommodations

The EEOC strongly recommends an interactive process for analyzing requests for reasoable accommodations. One of the best techniques to ensure that this process is

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followed whenever an employee requests an accommodation is to develop a written procedure and form for tracking requests for accommodations. By establishing a written policy, employers increase the chance that they will learn of requests for accommodations by employees and that these requests will not be ignored or mishandled by supervisors (See CUPA ADA Title I Manual, Chapter 9; EEOC Technical Assistance Manual at III-9).

B. Distribute Policy Guidelines to All Managers and Conduct Appropriate Training

The reasonable accommodation policy should not merely be distributed within the personnel department. The policy should be distributed to and instruction provided to all line supervisors as well as department and program heads.

III. Basic ADA Training

A. Conduct Managerial Training for All Managers with Hiring, Discharge, Demotion, Interviewing, or Other Personnel Responsibilities.

Focus on:

1. The scope of the ADA's obligations
2. The definition of "disability"
3. Hiring and interviewing rules
4. Reasonable accommodation obligations

The ADA is a very broad statute that affects many areas of the employment process. It is essential that managers making decisions in the employment process receive proper and immediate training regarding their role in the implementation of the ADA. This training can be performed in-house or by requiring managers to attend off-site training programs.

Many organizations are offering seminars or training films on the ADA, few of which provide the in-depth information needed by human resource experts, staff members, or in-house counsel. Moreover, the "philosophy" and approach of many commercial ADA seminars or films, which are expensive, may conflict with the decisions being made by the institution on ADA compliance.

Whatever training means are selected, all managers should be instructed to contact human resource and/or EEO/AA personnel whenever issues involving disabled applicants or employees arise. This will ensure uniformity and accuracy in the decision-making process. It also will help ensure that attention is paid to ADA implications of policies, procedures, and practices that might not have been addressed during the audit.

B. Analyze Needs for Additional ADA Training or Sensitivity Training (e.g., Working with Co-Workers or Students who Have Disabilities)

All employees should be given some training, either through written materials or seminars, on disability issues, working with disabled co-workers, and accommodating disabled students and members of the community.

IV. Hiring Audits

A. Audit of Hiring Procedures

1. Restructuring of Pre-Employment Inquiries and Job Applications
   Have job applications, recruiting materials, any standard advertising materials, and any literature about recruiting methods been sanitized, your pre-employment interview guides revised, and your interviewers trained so they know what can and cannot be asked? As a general rule, the ADA prohibits pre-offer inquiries into the medical background of an applicant. However, an employer is permitted at any stage of the hiring process to inquire into the applicant's ability to perform job-related functions. The key is to frame all pre-employment inquiries in terms of the applicant's ability to perform the essential job-related functions, rather than inquiring into the nature or severity of the applicant's disability.

2. Accessibility of Personnel Offices
   The first barriers applicants may encounter are getting to the office where job applications are taken and proceeding through the application and interview process. An accessibility audit must include personnel offices and other locations where hiring occurs. The reasonable accommodation obligations of the ADA extend to the physical accessibility of personnel offices as well as the work areas of employees. At a minimum, employers should consider posting a notice in recruiting advertisements and in appropriate locations notifying applicants that they should contact the personnel office if they need assistance in the hiring process.

   Another area of "accessibility" involves communication issues--whether applicants are able to read job applications, complete forms, or conduct interviews. Employers have to analyze potential communication barriers for hearing-, visually or mobility-impaired applicants and determine what accommodations, if any, are required.

3. Medical Examinations and Inquiries
   Medical examinations and medical inquiries have been limited under the ADA and employment decisions based on those examinations and inquiries will likely be subject to challenge. Employers may conduct post-offer medical examinations and inquiries and condition the offer of employment on the results of the examination provided that all entering employees in the same job category are subjected to an examination. While medical examinations permitted by the ADA are not required to be job-related and consistent with business necessity, the employer cannot use the results in a discriminatory manner. If an employer withdraws an offer of employment because of the results of the medical examination and exclusionary criteria

screen out individuals with disabilities, then the employer must be able to demonstrate that the criteria was job-related and consistent with business necessity, as well as demonstrate that there was no reasonable accommodation that would enable the individual with a disability to perform the essential job functions.

4. Pre-Employment Tests

Pre-employment tests are subject to reasonable accommodation requirements and the general rules prohibiting selection criteria with a disparate impact that are not job-related and consistent with business necessity. There are also special rules to ensure that tests measure necessary skills and not disabilities. If tests measure performance standards (e.g., typing speed and accuracy), those standards must be applied equally.

B. Audit of Hiring Criteria

Employers need to audit hiring criteria that are related to physical and psychological issues, as well as neutral criteria that may have a disparate impact, such as a driver's license requirement. Where selection criteria have a disparate impact, screen out, or tend to screen out an applicant with a disability because of the disability, the employer must demonstrate that the criteria is "job-related and consistent with business necessity."

C. Identify Jobs Where Physical or Mental Requirements Are at Issue -- Job Descriptions and Essential Functions

While the ADA does not require a review of all job classifications or the preparation, review, or revision of position descriptions, employers should undertake such a review. The purpose of this review is two-fold:

1. To ensure that current criteria can be defended under the ADA

2. To ensure that any important physical or mental criteria, as well as any pre-employment procedures, are appropriately defined

Employers must first determine whether the requirements are defensible under the ADA. Can the job be handled by persons with disabilities if reasonable accommodations are provided? Are the criteria job-related and consistent with business necessity or a legitimate safety standard? If current job criteria are not defensible under the ADA, job descriptions, applications, and questionnaires need to be revised to eliminate these requirements. A review may also identify jobs where physical or mental requirements are necessary and defensible. For those jobs, employers should:

1. Review appropriate job descriptions and revise if necessary

2. Prepare appropriate pre-employment inquiries

3. Tailor pre-employment tests

4. Design appropriate medical exams, if desired

V. Current Employees

A. Identify Current Employees with Disability Issues

Obligations to provide reasonable accommodation extend to current employees as well as applicants. The increased awareness among persons with disabilities might prompt requests for further accommodations. A self-evaluation could prevent a simmering problem from turning into a lawsuit.

Employers should not go out and require employees to reveal whether they are disabled. However, if a manager or supervisor already knows of an employee's disability that may not be fully accommodated, the ADA coordinator should be informed. This could be achieved through informal discussions when conducting site audits for Title II compliance. Employers could consider a memorandum informing employees of the name of the ADA coordinator and instructing them to contact that person if they need assistance.

B. Audit Personnel Practices for Possible Problem Areas

While it is not required that all neutral or discriminatory policies be reviewed and revised, it is illegal to apply discriminatory policies. Employers should audit all employment policies, focusing first on those that can result in discharge or demotions.

1. Workers' Compensation Policies

Aside from the issues of what inquiries can be made of applicants concerning their workers' compensation history, there are potential problems regarding the inter-relationship of state workers' compensation programs and the ADA. These include light duty obligations, return to work examinations, questions regarding when a person undergoing rehabilitation is covered by the protections of the ADA, and the availability of light duty to employees injured off the job.

2. Attendance and Sick Leave Policies

Neutral attendance and sick leave policies do not necessarily have to be revised, even if their application to persons with disabilities has a greater impact than their application to others. However, the EEOC's guidelines suggest that even if neutral attendance and leave policies cannot be challenged under a disparate impact theory, exceptions may have to be made for individual employees on a case-by-case basis as a reasonable accommodation. With these and many other neutral job-related policies, personnel departments need to be aware that they may be required to be flexible in the application of policies as a reasonable accommodation.

C. Review Health and Life Insurance Policies

Health, life, liability, and other insurance policies will be affected by the ADA. How the ADA will affect these is a complicated issue, made more so by the current absence of guidance by the EEOC. Employers should make sure that the persons responsible for employee benefits issues are aware of the ADA, have analyzed the insurance-related provisions of the ADA, and are prepared to consider the ADA in making benefits decisions after July 1992 (whether in the selection of insurers, the design or change of employee benefit plans, or claims administration).

D. Review Contracts and Subcontracts with Organizations that Provide Services to Employees

Employers cannot insulate themselves from liability under the ADA by contracting out services for their employees. When employers contract with other entities to provide training, services, or benefits to employees, to test job applicants, or to conduct other employment-related activities, employers must ensure that the entities providing these services comply with the ADA. For example, an employer that contracts for training sessions off-site needs to take steps to ensure that the employees' disabilities will be accommodated at the training session. These contractual relationships should be identified, steps taken to ensure that these entities are aware of their obligations under the ADA, and contract amendments prepared to cover any additional costs of ADA compliance.

6.2 SAMPLE AUDIT OF THE HIRING PROCESS

Caveat: This audit is intended to help institutions identify potential ADA issues. The inclusion of questions in this audit or a particular answer does not mean that there is an ADA problem or that the institution is in violation of the ADA and is not intended to express a view on substantive issues. This audit is intended to list potential areas of liability. Further analysis will be needed to determine if policies or procedures need to be changed.

Job Descriptions and Determination of What Are Essential Functions

[Note: The surveys of job descriptions in this section could be conducted by the institution's personnel or classification department or on a department-by-department basis.]

	Yes	No
1. Does the institution have job descriptions for each class of positions?	___	___
If your answer to question 1 is "yes," please answer the following questions regarding existing job descriptions:		
(a) Are there individualized position descriptions written for positions in different departments or facilities that include any site-specific, department-specific, or job-specific duties?	___	___
(b) If not, is this because the position is identical throughout the class?	___	___
(c) If not, are there other documents for those involved with hiring or supervisors to outline any site-specific or job-specific differences from the job description?	___	___
(d) Are all job descriptions complete, accurate and up-to-date, reflecting the way positions are currently structured and performed?	___	___
(e) Has the institution reviewed and/or revised all job descriptions within the last year to ensure they are complete?	___	___
(f) Did this review include the ADA issues discussed in the following questions?	___	___
2. If the institution does not have formal, written position descriptions for each class or type of position and for each individual job, is there any other documentation on the tasks of each position or type of position that might informally be considered a job description?	___	___

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		Yes	No
3.	Has the institution analyzed every position or class of positions to determine what physical tasks are required by the job and/or performed by a person in that position?	___	___
4.	Has the institution analyzed every position or class of positions to determine what physical skills or requirements the institution believes may be necessary to perform the tasks in that job?	___	___
5.	Has the institution analyzed every position or class of positions to determine what mental tasks are required by and/or are performed by a person in that position?	___	___
6.	Has the institution reviewed each position or class of positions to determine what mental skills and abilities the institution believes may be required to perform these functions?	___	___
7.	Has a determination been made of what are the essential functions or duties of each position or class of positions, focusing on the results or outcome of the function--what must be accomplished--and not simply the manner or process in which tasks are performed?	___	___
8.	Has the institution made a determination of what physical or mental skills and abilities it believes or will contend are necessary to perform the essential functions of each job?	___	___
	(a) If not, has the institution made a determination of what physical or mental skills and abilities are necessary to perform the essential functions of some jobs (e.g.,vacant positions), but not all positions?	___	___
9.	If your answer to question 8 or 8(a) is "yes,"answer the following questions. If your answer is "no," then the institution may wish to review descriptions using these procedures before advertising or filling any job.		
	(a) Did this determination involve interviewing employees in that position to determine their duties, or other on-site analysis?	___	___
	(b) Did this determination include discussions with supervisors on what duties in a particular position or class of positions are essential?	___	___
	(c) If a position description questionnaire (pdq) was used to identify physical or mental skills and abilities, what other means were used to verify or analyze this information?		

Yes No

(d) Was the determination of what physical skills or mental skills and abilities are required made with input of qualified medical personnel? ___ ___

(e) Has consideration been given to the fact that some persons with disabilities can perform functions using skills and abilities that are not used by existing employees, so that the skills and abilities listed may or may not be essential to accomplishment of that job? ___ ___

(f) Has this determination been reviewed by legal counsel familiar with the EEOC's regulations on what are and are not essential functions and what evidence may be needed to defend that determination? ___ ___

(g) Has the job description list of required knowledge, skills, or abilities been modified to include language that individuals with disabilities can explain or demonstrate other ways to perform essential job functions? ___ ___

10. Have job descriptions or some other similar format been prepared or revised to identify the essential functions required to perform each job, including all essential tasks as well as any essential physical or mental skills or abilities? ___ ___

(a) If so, has management ensured that any existing job descriptions have been updated to include all essential functions and required physical and mental skills and abilities to perform the job? ___ ___

(b) If not, have supervisors been advised not to rely on physical or mental criteria in existing job descriptions without consulting with the ADA compliance officer? ___ ___

(c) Is there a standard policy indicating that compliance with work rules, codes of conduct, and other policies are part of the "essential functions" of the job if this is not expressed in every job description? ___ ___

11. Have all other documents describing the job (such as job announcements; advertisements, including Community College Times ads; or class speci-

Yes No

fications) been reviewed and, if necessary, modified to ensure that they reflect all essential functions or to incorporate by reference a job description or other listing of essential functions? ___ ___

12. Have all job descriptions or other documents describing duties or functions of the job been reviewed to:

    (a) Ensure that they note which functions are non-essential? ___ ___
    and

    (b) Ensure that they have distinguished physical or mental skills or abilities that are necessary to perform the essential functions of the job from those necessary to perform non-essential functions? ___ ___

13. If the institution has not completed a comprehensive review of all job descriptions, or is not planning such a review, has the institution established a priority system, procedures, and timetable for reviewing job descriptions? ___ ___

    Recommended coverage:

    (a) Positions advertised outside the institution ___ ___

    (b) Vacant positions within the institution ___ ___

    (c) Positions in the line of progression for existing employees with disabilities ___ ___

14. If the institution does not have formal job descriptions or is not planning a comprehensive review:

    (a) Has the institution discussed with those involved in the hiring process the distinction between essential and non-essential functions under the ADA? or ___ ___

    (b) Has the institution established a system so that all questions regarding decisions not to hire individuals with disabilities are reviewed by a person familiar with the EEOC regulations and guidelines? ___ ___

[Note: If the answer to any of these questions is "no," the institution has not violated the ADA, since it is not required that employers draft or revise job descriptions. However, the institution is at greater risk and may have more difficulty in defending a decision not to hire an individual with a disability on the

Yes No

grounds that the individual is unable to perform the essential functions of the job if a determination of essential functions is not made and documented before a hiring decision is made.]

Setting Qualification Standards

15. Has the institution and/or have individual departments or programs established prerequisites for each position and/or class of positions (e.g., educational requirements, experience requirements or preferences, or licenses)? ___ ___

16. Does the institution have any guidelines (formal or informal) under which applicants for employment will be rejected or employees will be denied promotion based upon past conduct or behavior? ___ ___

17. Are there any physical conditions (e.g., certain types of back injuries) that will render a person ineligible for employment or promotion to a particular position? ___ ___

18. Are there any mental or psychological criteria that will render a person ineligible for employment or promotion to a particular position? ___ ___

19. If the answer to any one of questions 15-18 is yes, have these "qualification standards" been reviewed to determine if they are either (1) facially discriminatory or (2) neutral but likely to have a disparate impact on persons with disabilities because one or more individuals are likely to be screened out because of their disabilities? ___ ___

20. Has the institution reviewed all other selection criteria (e.g., qualifications, minimum requirements, performance standards, preferences, or other standards for choosing applicants or employees for positions) to determine whether they are either:

    (a) Facially discriminatory against persons with disabilities? ___ ___

    (b) Likely to screen out or tend to screen out an individual with a disability or group of individuals with disabilities because of their disabilities? ___ ___

21. If the answer to question 19 or 20 is "yes," respond to the following questions and describe on separate forms the process used to identify and review selection criteria; if the answer is "no," an audit of selection criteria should be conducted focusing on the following factors:

	Yes	No
(a) Does the institution utilize selection criteria that are facially discriminatory against persons with disabilities (such as restrictions on employment of individuals with certain contagious diseases for food handling positions in cafeterias)?	___	___
(b) Does the institution utilize criteria that, while they may affect persons without disabilities, will also screen out persons with particular disabilities (such as physical qualifications or denial of positions to persons with back injuries)? and	___	___
(c) Does the institution utilize any other criteria that are facially neutral but may tend to screen out persons with disabilities (such as past poor attendance resulting from alcohol abuse)?	___	___

22. If the answer to question 21(a), (b), or (c) is "yes," list all criteria that may have a "disparate impact" and answer questions 23-29 for those criteria.

____

____

____

	Yes	No
23. Have all selection criteria been reviewed to ensure that they relate to essential functions of the job?	___	___
24. Have all medical or psychological qualification standards been reviewed by appropriate medical personnel to ensure that they are either necessary to perform essential functions of the job or that the presence of a particular condition would likely pose a direct threat to the health and safety of the individual or others?	___	___
25. If any selection criterion is being defended on the basis of safety or health, has the criterion been reviewed by medical personnel who have narrowly tailored the criterion to a point which is defensible based on a significant risk of future injury to the employee or others?	___	___
(a) Is there a procedure in place to ensure that applicants are individually analyzed before they are screened out on the basis of a safety risk?	___	___
(b) Does this procedure include consideration of reasonable accommodations that might reduce the risk?	___	___
(c) Is the criterion based on medical or other objective evidence and not assumptions, stereotypes, or fears?	___	___

Yes No

26. Have all qualification standards that might have an impact on a person with a disability been reviewed to determine whether they can be defended as job-related and consistent with business necessity? ___ ___

27. If the review of selection criteria has revealed any that cannot be defended under the ADA's standards, have steps been taken to eliminate the use of these selection criteria and to omit references to these criteria in personnel materials? ___ ___

28. Have all persons involved in making hiring decisions been trained that they should not screen out an individual based upon stereotypical assumptions of safety or health risks and that all decisions must be based on medical or other comparative evidence related to the job in question and to the individual applicant's condition? ___ ___

29. Have all persons involved in hiring, promotion, and other employment decisions been advised that if a criterion that is being used to reject an applicant or employee for a position relates in any way to a physical or mental condition, or might have to do with a physical or mental condition (e.g., a record of poor attendance that an applicant says was due to medical treatment or past alcoholism, which the employee claims is controlled), then the proposed decision needs to be reviewed with appropriate human resource or EEO/AA personnel familiar with the ADA before the adverse decision is communicated to the applicant? ___ ___

Nondiscrimination In Recruiting and Advertising

30. Have all written recruitment and job advertising materials been reviewed to eliminate any references to physical or mental criteria or preferences unless these can be defended as necessary to perform essential functions of the job, under the direct threat standard, or are otherwise job-related and consistent with business necessity? ___ ___

31. Do all job advertisements identify or incorporate by reference essential functions? (See question 11.) ___ ___

32. If any advertisement identifies a location for applying for jobs (e.g., a department or personnel office):

    (a) Is that location accessible to persons with mobility impairments? ___ ___

    (b) If the location is not accessible, does the ad note that fact and provide alternative instructions? ___ ___

		Yes	No
33.	Does the institution conduct any recruitment activities at any other site?		
	(a) If so, has the institution taken steps to ensure that each location is physically accessible to applicants with disabilities and that applicants with disabilities that impede communication are accommodated?		
	(b) If so, has the process for selecting locations in which to recruit been analyzed to determine if it avoids discrimination based on disability (e.g., not recruiting at schools for persons with hearing impairments)?		
34.	Does the institution advertise jobs and provide telephone numbers for more information?		
	(a) If so, has the institution considered providing a TDD (telecommunication device for the deaf) number, unless a relay service has been established, or listing an address for more information?		
	(b) Is job information that is printed (e.g., a newspaper) available in alternative formats for persons with vision impairments (e.g., a telephone job line)?		
35.	Have all persons involved in recruitment or selection of employees for hiring or advancement been trained in the interview limits discussed in questions 63-111 and advised that they cannot discriminate against persons with disabilities because of their disabilities, unless the disability renders the person unable to perform the job with reasonable accommodation, or unless a reason exists that is defensible on some other grounds?		
36.	Is employment recruiting material available in accessible media formats, such as print media for individuals with hearing impairments and large-print, braille, or verbal media for persons with visual impairments?		
	(a) If not, has the institution developed alternative methods of providing recruitment information to applicants or candidates withvisual or hearing impairments, if requested?		

Nondiscrimination and Reasonable Accommodation In the Job Application Processes

37. Has the institution obtained and posted the new equal employment

		Yes	No
	opportunity poster in accessible locations in all facilities where applications are taken or hiring occurs?		
38.	Has the institution prepared its own notices and placed them in accessible locations where applications are taken or hiring occurs, using accessible formats (i.e., enlarged print, braille, or audio cassette), notifying disabled applicants that they can receive accommodation in the hiring and employment processes and how to make such a request?		
39.	Have all persons responsible for having first contact with job applicants been instructed that if a person with a disability wishes to apply for a job they are to be treated the same as other job applicants, except that it may be necessary to provide reasonable accommodations in the process?		
(a)	Have these individuals been instructed that if an individual with a hearing impairment comes in to apply for a job, it may be necessary for the initial contact person to provide basic instructions on the job application process in writing?		
(b)	Alternatively, has the institution prepared and distributed written instructions on the job application process to be handed out, together with an application, to all persons contacting the institution looking for work?		
(c)	Have individuals who have initial contact with applicants been instructed that it may be necessary for them to read basic instructions on the application process to an applicant with a visual impairment?		
(d)	Have the individuals who have initial contact with applicants been instructed that they may need to assist some persons with visual or dexterity impairments or learning disabilities in completing job applications?		
(e)	Do all individuals who have initial contact with applicants know who to contact if there are any questions regarding job applicants with disabilities?		
40.	Are all hiring procedures, including job applications, testing, and interviews, carried out in locations that are physically accessible to all applicants with disabilities, such as applicants who use wheelchairs or have other mobility impairments?		
41.	If the answer to question 40 is "no," and there are personnel offices and/		

Yes No

or departmental offices where applications are filed or interviews held that are not currently accessible:

(a) Have the persons responsible for hiring in those locations been advised that they may need to make accommodations in hiring procedures (such as processing applications or conducting interviews in accessible locations)? ___ ___

(b) Are prospective applicants advised of the need to arrange for accommodations before coming to inaccessible locations? ___ ___

(c) Are there plans to renovate or relocate personnel functions to make them accessible? [The personnel office is often the point of first contact and a target for ADA complaints.] ___ ___

42. Do all steps of the application and interviewing process for each department utilize accessible formats or alternative services, such as:

(a) The availability of personal readers, braille, audio cassettes, or computer readers for applicants with vision impairments ___ ___

(b) Written materials, sign language interpreters, or assistive listening devices for applicants with hearing or speech impairments ___ ___

(c) Personal assistance or mechanical device for applicants with manual impairments who need help completing applications ___ ___

(d) Appropriate services for applicants with learning disabilities ___ ___

43. If the answer to question 42 is "no," and if the institution's hiring procedures are not currently available in accessible formats, have all persons who are likely to be in contact with job applicants been advised that if there is a need or a request for an accommodation or assistance during the hiring process, they are to contact the personnel department for assistance in making appropriate accommodations? ___ ___

44. Have persons involved in the hiring process been advised to be prepared for dealing with communication barriers and the necessity to use alternatives (e.g., note pad and paper to communicate with a person with a hearing impairment)? ___ ___

Yes No

[Note: If the answer to any or all of questions 37-44 is "no," the institution may face a challenge for failure to reasonably accommodate job applicants.]

45. Has the institution taken steps to ensure that there are no policies, procedures, and practices that prevent persons with disabilities from applying for employment or being considered for employment? ___ ___

Specific examples:

(a) Does any department refuse to accept or process applications from persons with disabilities?

(b) Does any department harass persons with disabilities who apply for jobs or seek to deter them from applying for jobs?

(c) Does any department use a formal or informal system of screening out persons with disabilities before consideration of their qualifications?

(d) Are persons with disabilities rejected merely because they asked for an accommodation in the hiring process?

Pre-Employment Testing

46. Does the institution administer pre-employment tests to any employee prior to hiring, e.g., typing speed tests, physical agility tests, spelling tests, mathematical examinations, honesty tests, psychological tests, or other tests (excluding drug testing and medical examinations)? ___ ___

If the answer to question 46 is "yes," answer questions 48-55.

47. Does the institution rely on the results of tests administered by some other entity (e.g., state examinations or educational testing services)? ___ ___

If the answer to question 47 is "yes," has the institution taken steps to ensure that the state or other testing agency is aware of its obligations under the ADA and is in the process of analyzing the issues in questions 48-55? ___ ___

48. Is each type of pre-employment test required of and administered to all similarly situated applicants seeking a particular position, class of positions, or job category (except for demonstrations required of persons with obvious disabilities that may affect performance of essential functions)? ___ ___

49. Have all tests been reviewed to determine whether the test results

		Yes	No
	accurately reflect the skills, aptitudes, and abilities necessary to perform essential job functions?	___	___
50.	Have all tests been reviewed to ensure that they do not test the sensory, manual, or speaking skills of the applicant that might be impaired where those skills are not necessary to perform the essential functions of the job?	___	___
51.	Have persons involved in administering pre-employment tests been advised that it may be necessary to make reasonable accommodations in testing, including:	___	___
	(a) Changes in physical location	___	___
	(b) Changes in the way the test is administered if it measures impaired sensory, manual, or speaking skills not necessary to perform the job	___	___
	(c) The use of alternative tests or test formats that measure required skills and abilities instead of impairments	___	___
	(d) The provision of auxiliary aids and services	___	___
52.	Have all psychological tests (including personality inventories, honesty tests, aptitude tests, and intelligence tests) been reviewed to determine whether the test accurately reflects knowledge, skills, or abilities required to perform the essential functions of the job, meets the direct threat standard, or otherwise satisfies the job-related and consistent with business necessity standard for selection criteria?	___	___
53.	Are there any particular questions asked on psychological or other pre-employment tests that might be considered objectionable under the ADA even if the test as a whole is defensible?	___	___
	(a) If so, has the determination been made that these questions do not violate the prohibition on pre-employment inquiries?	___	___
54.	Does the institution or individual department have a procedure for consideration of possible substitutions of alternative pre-employment tests if existing tests screen out an individual because of his or her disability?	___	___
	If so, please describe and attach any relevant written procedure.		
55.	Are all applicants informed in an accessible manner:		

Yes No

(a) That auxiliary aids and other reasonable accommodations will be provided upon request during pre-employment testing ____ ____

(b) Of the procedure for requesting accommodations or substitutions of tests ____ ____

[Note: The ADA regulations expressly cover pre-employment testing. See EEOC Technical Assistance Manual at V-17.]

Drug Testing

56. Does the institution or individual departments conduct pre-employment drug testing for any positions (including security and medical personnel)? ____ ____

If the answer is "yes," answer the following questions. If the answer is "no," skip to the next section.

57. Are drug tests administered to all applicants for a particular class of positions? ____ ____

58. If drug tests are administered to all applicants or all applicants in particular job categories, regardless of disability, is the test limited to the illegal use of drugs rather than the lawful use or abuse of legal drugs? ____ ____

59. Has the institution made a determination that its drug testing procedures are accurate (e.g., appropriate chain of custody, confirmation testing, qualified laboratories)? ____ ____

60. Are drug tests administered only after a conditional offer of employment is made or to current employees? ____ ____

(a) If not, does the institution ensure that information regarding lawful use of drugs is not revealed to persons making hiring decisions until after a conditional offer is extended and that this information is used consistent with the ADA? ____ ____

(b) Has the institution ensured that inquiries regarding prescription drug use are not made until a conditional offer of employment has been made? [See EEOC Technical Assistance Manual at VIII-7.] ____ ____

61. Does the institution utilize some type of medical review officer to oversee all drug tests of applicants and employees and verify that the results are

Yes No

due to the illegal use of drugs and not the lawful use of drugs or other lawful substances? ___ ___

62. Are drug test results kept segregated from personnel files and the information kept confidential? ___ ___

[Note: If the answer to any of these questions is "no," there is a possibility that the institution's drug testing procedures might be challenged under the ADA. A medical review officer is not required, except for DOT positions, but is a recommended way to avoid decisions based upon disability or false positive results.]

Medical Examinations and Inquiries

Pre-Offer Inquiries

[Note: The following questions relate to inquiries made of applicants before a conditional offer of employment is made.]

63. Do the institution's employment application or other personnel forms contain questions as to whether an applicant is an individual with a disability? ___ ___

64. Do the institution's employment application or personnel forms contain a list of potentially disabling impairments for the applicant to check? ___ ___

65. Does the institution ask on job applications, in interviews, or on other forms whether the applicant has any current impairments or disabling conditions? ___ ___

66. If the institution asks an applicant to identify himself or herself as an individual with a disability, is this request only in the context of the institution's affirmative action obligations as a federal contractor, and is it clear that this disclosure is voluntary? ___ ___

67. Does the institution's employment application or any personnel form contain questions regarding an applicant's past medical history? ___ ___

68. Does the institution's employment application or personnel forms contain questions about past or pending workers' compensation claims? ___ ___

    (a) Are such questions asked during interviews? ___ ___

    (b) Are such questions asked during reference checks? ___ ___

			Yes	No
	(c)	Is any telephone hotline or other system used to check past claims?	—	—
	(d)	Are employment records obtained (e.g., for inter-agency transfers) that include information on workers' compensation claims or injuries?	—	—
69.		Does the institution inquire, either on an employment application form or in a job interview, whether an applicant has a sexually transmitted disease such as AIDS?	—	—
70.		Does the institution inquire on an employment application form or in a job interview whether an applicant:		
	(a)	Wears glasses or contacts	—	—
	(b)	Uses a hearing aid	—	—
	(c)	Has a heart monitor	—	—
	(d)	Uses any medical device	—	—
71.		Does the institution inquire, either on an employment application form or in a job interview, whether an applicant has back problems or other physical limitations?	—	—
72.		Does the institution inquire, either on an employment application form, in a job interview, or during a reference check, whether an applicant has a history of:		
	(a)	Psychological problems	—	—
	(b)	Physical illnesses	—	—
	(c)	Conditions due to psychological disorders	—	—
73.		Does the institution conduct any type of medical examinations of applicants (whether a physical examination or a questionnaire) before a conditional offer of employment is made?	—	—
74.		Does the institution ask on application forms or in interviews about an applicant's past or current need for or receipt of medical or disability benefits?	—	—

		Yes	No
75.	Does the institution ask whether an applicant has ever received assistance or assistive devices in performing past jobs?	___	___
76.	Does the institution ask on any personnel forms or in interviews whether an applicant is or has ever been an alcoholic or drug addict or whether the applicant has ever received treatment for drug addiction or alcoholism?	___	___
77.	Are applicants ever asked whether they have a spouse, children, or friends with disabilities?	___	___
78.	Are applicants ever asked on personnel applications, during interviews, or on any forms:		
	(a) Whether they have ever been treated for a mental condition	___	___
	(b) Whether they have been treated by a psychiatrist or a psychologist and, if so, for what condition	___	___
79.	Are applicants asked whether they are taking any prescribed drugs or have taken any drugs in the past (other than the current illegal use of drugs)?	___	___
80.	Does the institution ask applicants on any personnel forms or in interviews:		
	(a) Whether they have been hospitalized in the past	___	___
	(b) Whether they have or have had a major illness	___	___
	(c) Whether they have any current illnesses	___	___
81.	Does the institution ask during the pre-employment process how many days an applicant missed at a prior job because of illness?	___	___
82.	Do individual supervisors or departments request or review records of an applicant/employee's sick leave where the applicant has not been disciplined for violation of leave policies?	___	___
83.	Do any individual supervisors or departments ask any one of questions 63-82?	___	___
84.	Does the institution or do individual departments ask any one of questions 63-82 during reference checks?	___	___

Yes No

85. Does any entity that conducts reference or background checks for the institution ask any one of questions 63-82? —— ——

[Note: If the answer to any one of questions 63-65 and 67-82 is "yes," the institution may be using impermissible pre-employment inquiries. See EEOC Technical Assistance Manual at V-4; CUPA ADA Title I Manual Chapters 6 and 7.]

86. Have all job applications and personnel forms been reviewed and sanitized to remove all references to physical condition, disability, or illness and to ensure that any inquiries are phrased in a permissible manner? —— ——

87. Has the institution reviewed its application procedures to ensure that all medical questions, questionnaires, or specific medical inquiries have been eliminated prior to the giving of a conditional offer of employment? —— ——

88. Have all job application procedures been reviewed to ensure that there are no questions asked regarding workers' compensation history prior to the extension of a conditional offer of employment? —— ——

89. Has the review included procedures used for checking references as well as questions asked during interviews? —— ——

[Note: If your answer to any one of questions 86-89 is "no," the institution'sprocedures may violate the ADA.]

90. Does the institution and/or do individual departments intend to ask questions prior to the extension of a conditional offer of employment regarding the ability of applicants to perform essential functions of the job? —— ——

If the answer to question 90 is "yes," answer the following questions; if the institution does not want to make any pre-offer inquiries, skip to the section on post-offer examinations.

91. Has the institution drafted narrowly-defined questions focused on the ability to perform essential functions of the job? —— ——

92. Have separate pre-offer questions been devised for each position, class of positions, or job category in which such questions will be asked? —— ——

93. Will these questions be asked of all job applicants for positions in that job class or category (except where an obvious disability may affect performance of essential functions)? —— ——

		Yes	No
94.	Alternatively, does the institution have a procedure whereby applicants are given a job description or other list of essential functions and/or skills and abilities necessary to perform essential functions, with generic questions on the ability of the applicant to perform the essential functions of the job?	___	___
95.	Have all pre-employment questions been reviewed with legal, human resource, and/or medical experts to ensure that they are narrowly defined and defensible under the ADA?	___	___
96.	Have all interview and reference procedures been reviewed and/or modified to ensure that they include only permissible inquiries?	___	___
97.	Has training regarding "do's" and "don'ts" and appropriate questions for interviewers been conducted or scheduled for all persons involved in interviewing applicants for employment?	___	___

Post-Offer Medical Entrance Examinations

98.	If the institution extends an offer of employment prior to conducting a medical examination or inquiry, does the institution make its offers of employment for any positions conditional on the results of medical examinations or inquiries?	___	___
99.	Are all conditional offers of employment in writing?	___	___

[Note: The following questions apply to medical examinations or inquiries made after a conditional offer of employment. Answer separately for each position where the offer is conditional on a medical inquiry or examination (e.g., security, physical plant).

100.	Where medical examinations or inquiries are used during the hiring process, are these given to all entering employees in these positions?	___	___
101.	Has the institution or individual departments rejected applicants in the past or discharged newly hired employees who identify any current or past medical conditions during a medical entrance examination?	___	___

If your answer to question 101 is "yes":

(a)	Have the standards under which applicants or employees have been rejected in the past based on responses to medical inquiries been reviewed with medical, legal, and/or human resources personnel to ensure that these decisions are defensible under the ADA?	___	___

		Yes	No
102.	Has the institution ever used information collected from medical examinations or inquiries to reject an applicant on the basis that the applicant cannot perform non-essential job functions?	___	___
	(a) If so, has this standard been modified to comply with the ADA?	___	___
103.	Are medical examinations and inquiries confined to the applicant's ability to perform the essential functions of the job?	___	___
	(a) If not, is there a continued business justification for obtaining information regarding the ability to perform nonessential job functions or for doing a comprehensive physical examination?	___	___
104.	Are medical examination questions tailored for individual positions?	___	___
	(a) If not, is there a continued business purpose for obtaining information that is not being used to determine an individual's ability to perform the essential functions of a particular job?	___	___
105.	Has the institution set guidelines on the reasons that a doctor can reject an employee as a result of a physical or mental examination?	___	___
106.	Has the institution reviewed any guidelines used by the physicians conducting its employment entrance examinations to make sure that they meet the institution's standards and/or are defensible under the ADA?	___	___
107.	Has the institution instructed all physicians conducting employment entrance examinations as to the institution's guidelines for complying with the ADA?	___	___
	(a) Are these doctors sufficiently familiar with the various jobs in the institution that they can apply these guidelines to the way the institution's jobs are performed and not rely on assumptions?	___	___
108.	Has the institution screened out or does the institution intend to screen out individuals who have previously suffered on-the-job injuries or filed or received workers' compensation benefits?	___	___
	If your answer to question 108 is "yes":		
	(a) Are these decisions made based upon an individualized inquiry into whether the individual would be a "direct threat" to the health and safety of the individual or others?	___	___

			Yes	No
	(b)	Do these decisions take into consideration reasonable accommodations that could reduce the risk of injury?		
	(c)	If the basis for the exclusion is not direct threat, is the exclusion otherwise defensible as job-related and consistent with business necessity?		
109.		Does the institution disclose the information obtained during a medical entrance examination to persons other than the institution's human resources personnel and supervisors making hiring decisions?		
	(a)	If so, has this procedure been modified to comply with the ADA?		
110.		Are all results of medical entrance examinations kept segregated from the applicant or employee's personnel files and kept confidential?		
	(a)	If not, have these procedures been modified to comply with the ADA?		
111.		Have the institution's procedures for filing and disclosure of medical information been reviewed and, if necessary, modified to comply with the confidentiality provisions of the ADA?		

[Note: The ADA imposes extensive requirements on when medical inquiries can be made and how they can be used. See EEOC Technical Assistance Manual at VI-2, VI-11; CUPA ADA Title I Manual at Chapters 6, 7.]

The Reasonable Accommodation Process

[Note: These questions relate to inquiries into reasonable accommodations necessary to perform essential job functions, as distinct from accommodations to enable applicants to get through the application process addressed above.]

			Yes	No
112.		Has the institution interviewed or received employment applications from individuals with disabilities who may need some type of accommodation to perform essential job functions?		
	(a)	If so, have you been able to provide reasonable accommodations to those applicants/employees?		
113.		Is the institution intending to inquire, either on an application or in an interview, whether an applicant is able to perform tasks with or without an accommodation?		

Yes No

If so,

(a) If the applicant indicates that he or she can perform the task with an accommodation, is the institution intending to ask for an explanation or demonstration of how the applicant can perform the tasks and with what accommodation? and — —

(b) Is the institution prepared to go through the reasonable accommodation process if an applicant answers "yes" and asks for accommodations? — —

[Note: Employers are not obligated under the ADA to ask whether applicants need reasonable accommodations, except that an employer cannot refuse to hire a person with a known or obvious disability based upon conjecture that the person cannot perform essential functions. Therefore, as a practical matter the employer may need to raise a reasonable accommodation issue before rejecting an applicant with a known or obvious disability that might prevent performance of essential functions. In most cases, however, the issue will come up when the applicant expresses a need or a desire for an accommodation.]

114. Has the institution established a process to consider requests for reasonable accommodations by job applicants? — —

If so, answer the following and questions 115-118. If not, a written procedure is strongly recommended.

(a) Is this process established so that reasonable accommodation inquiries can be handled at any point in the selection process? — —

(b) Does this process involve input from and involvement of the applicant? — —

(c) Does this process include involvement with appropriate medical personnel, if necessary? — —

(d) Does this process involve inquiry into alternative accommodations, if necessary? — —

(e) Does this process include inquiries to other knowledgeable resources, such as state vocational rehabilitation services, if necessary? — —

			Yes	No
	(f)	Does the process provide that any medical information acquired during the process will be kept confidential?	___	___
115.		Does the institution's reasonable accommodation process involve input from individuals able to make inquiries as to available resources and alternatives?	___	___
116.		Does the institution have appropriate medical personnel available who can be contacted to discuss or review reasonable accommodation issues, medical records, requested accommodations, and/or communicate with an applicant or employee's physician?	___	___
	(a)	Are these persons familiar with the various job functions in the institution?	___	___
	(b)	Are these persons familiar with the ADA's standards?	___	___
117.		Is there a process in place for determining whether an accommodation is an undue hardship from a financial or operations standpoint and to document this decision?	___	___
118.		Does the process for analyzing reasonable accommodation requests:		
	(a)	Provide that decisions regarding undue hardship will be made by the head of the institution or his/her designee considering the resources of the institution	___	___
	(b)	Provide for institutional budgeting for reasonable accommodation	___	___
	(c)	Document the process used	___	___
	(d)	Provide written evidence that the accommodation was offered and accepted	___	___
119.		Have all employees involved in the hiring or selection process been trained and/or instructed that they cannot reject an applicant based upon the mere need for an accommodation or a request for an accommodation?	___	___
120.		Have all employees involved in making hiring and other selection decisions been trained as to when and how reasonable accommodation issues should and must be discussed and the limited situations in which a reasonable accommodation can be denied as an undue hardship?	___	___

Yes No

(a) Alternatively, have all employees involved in the hiring process been instructed to contact the human resources/ personnel department when any issue of reasonable accommodation is raised? ___ ___

References

121. Have all forms and procedures used for checking references, including standard questionnaires, been reviewed to ensure that they comply with the restrictions on pre-offer inquiries into medical conditions or workers' compensation history? ___ ___

122. Have all persons involved in conducting reference or background checks been given instruction and training on the restrictions for making pre-offer inquiries? ___ ___

123. Is any medical information obtained during reference checks after a conditional offer of employment has been extended:

(a) Treated as a confidential medical record in accordance with the ADA's procedures ___ ___

(b) Used only in accordance with the ADA ___ ___

Employment Agencies

124. Does the institution utilize employment agencies to refer temporary employees or as a source of applicants? ___ ___

125. If your answer to question 124 is "yes," has the institution addressed with the employment or temporary agency issues such as compliance with the ADA in referrals and the burdens of making any reasonable accommodations? ___ ___

[Note: The obligations of the institution may depend upon whether temporary employees are considered employees of the institution, the agency, or both.]

Faculty Hiring (See also Chapter 6.5.)

126. Do position descriptions exist for full-time faculty or other teaching positions? ___ ___

127. If the answer to question 126 is "no," have the dean of academic affairs, department heads, or the appropriate individuals identified the essential functions of particular positions, e.g.,

		Yes	No
(a)	Hours or schedules		
(b)	Absence policies		
(c)	Teaching responsibilities		
(d)	Research/publishing standards		
(e)	Counseling duties		

[Note: Formal job descriptions are not required by the ADA. It will be difficult, however, to defend a decision not to hire a person for a teaching position because of his or her disability if there is no prior written description of the "essential functions" of the job in a particular department.]

		Yes	No
128.	Have qualification standards for faculty been analyzed to address the issues in questions 15-29?		
129.	Have faculty recruitment procedures been analyzed to address the issues in questions 30-36 (e.g., alternative formats for advertising)?		
130.	Have faculty hiring procedures been analyzed to address the issues in questions 37-44 (e.g., reasonable accommodations in the hiring process)?		
131.	Have faculty interviewing procedures been reviewed to ensure that they are non-discriminatory and to address the issues in questions 63-111 (e.g., that members of search committees not ask inappropriate questions prior to a conditional offer)?		
132.	Has a procedure been established to address requests for reasonable accommodations by applicants for teaching positions?		
133.	Have selection criteria for teaching positions been reviewed to ensure that they are job-related and consistent with business necessity?		
134.	Have all individuals involved in the process of interviewing or hiring faculty been trained in their obligations under the ADA?		

[Note: If the answer to any one of questions 126-134 is "no," steps need to be taken to make the dean of faculty or academic affairs aware of and responsive to ADA and other EEO concerns. While the courts give some discretion to higher education in setting standards for faculty, these standards and procedures cannot discriminate on the basis of disability.]

Student Employees (See also Chapter 6.4.)

		Yes	No
135.	Is there a separate office that handles procedures for student employees than for other employees?	___	___

If so, answer the following questions:

		Yes	No
136.	Do position descriptions exist for work-study or other student employee positions?	___	___
137.	If the answer to question 136 is "no," have appropriate individuals identified the essential functions of particular positions?	___	___

[Note: Formal job descriptions are not required by the ADA. It will be difficult, however, to defend a decision not to hire a person for a work-study position because of his or her disability if there is no prior written description of the "essential functions" of the job in a particular department.]

		Yes	No
138.	Have student work-study selection or hiring procedures been analyzed to address the issues in questions 37-44 (e.g., reasonable accommodations in the hiring process)?	___	___
139.	Have student work-study interviewing procedures been reviewed to ensure that they are non-discriminatory and to address the issues in questions 63-111 (e.g., that departments not ask inappropriate questions prior to a conditional offer)?	___	___
140.	Has a procedure been established to address requests for reasonable accommodations by applicants for work-study or other student employees?	___	___
141.	Have selection criteria for work-study positions been reviewed to ensure that they are job-related and consistent with business necessity?	___	___
142.	Have all individuals involved in the process of interviewing or hiring students been trained in their obligations under the ADA?	___	___

[Note: If the answer to any one of questions 135-142 is "no," steps need to be taken to make the appropriate department and program heads aware of and responsive to ADA and other EEO concerns.]

Training Issues

143. Have all individuals involved in the hiring process, from the taking of applications through the decision-making process, been advised that

		Yes	No
	there are new obligations under the ADA effective July 26, 1992?	___	___
144.	Have all individuals in the hiring process been trained in their obligations under the ADA?	___	___
145.	Has a system been established for ADA issues to be promptly addressed by knowledgeable individuals within the human resources/personnel department, and have all individuals in the hiring process been instructed whom to contact?	___	___

6.3 SAMPLE AUDIT OF EMPLOYMENT POLICIES, PROCEDURES, AND PRACTICES

Caveat: This audit is intended to help institutions identify potential ADA issues. The inclusion of a question in this audit or a "no" answer does not mean that there is an ADA problem or that the institution is in violation of the ADA and is not intended to express a view on substantive issues. There are many gray areas of this new law. It is intended to raise issues that need to be considered. Whether a particular accommodation must be made or policy changed can only be analyzed on a case-by-case basis. The audit is intended to be a comprehensive list of potential problem areas, including many that may not be problems depending upon how the courts interpret the law.

[Note: It may be necessary to have this audit prepared by individual departments, schools, colleges, or programs.]

Accessibility of Work and Non-Work Areas for Existing Employees with Disabilities

Yes No

1. Does the institution currently employ disabled employees who may request modification of existing work and non-work areas so they can perform their duties? ___ ___

2. Has the institution conducted a physical accessibility audit of each facility where disabled employees are working? ___ ___

3. Are there work areas that still need modifications in order to make them physically accessible to existing disabled employees? ___ ___

4. If your answer to question 4 is "yes," then for each such area answer the following:

   (a) If those modifications would be a reasonable accommodation that would not impose an undue hardship, are steps being taken to make those modifications? ___ ___

   (b) If those modifications are not being made, is the institution prepared to show they would impose an undue hardship? ___ ___

   (c) If those modifications are not being made, have other steps been taken to ensure that employment opportunities are provided to those employees? ___ ___

5. Has the institution conducted a physical accessibility audit of "non-work areas," such as lunch rooms, break rooms, and restrooms, in facilities where disabled employees are currently working? ___ ___

6. If your answer to question 5 is "yes," did the institution determine that all non-work areas were physically accessible to disabled individuals? ___ ___

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		Yes	No
7.	Are there non-work areas that still need modifications in order to make them physically accessible to and usable by existing disabled employees?	___	___
8.	If your answer to question 7 is "yes," then for each such area answer the following:		
	(a) If those modifications would be a reasonable accommodation that would not impose an undue hardship, are steps being taken to make those modifications?	___	___
	(b) If those modifications are not being made, is the institution prepared to show they would impose an undue hardship?	___	___
	(c) If those modifications are not being made, have other steps been taken to ensure that those employees have access to the same benefits and privileges of employment in the most integrated setting possible?	___	___
9.	Has the institution ever denied a request by an existing employee with a disability that a work area be made more physically accessible?	___	___
	If "yes," please describe those circumstances. ______________________________ ______________________________ ______________________________		
10.	Has the institution ever denied a request by an existing employee with a disability that a "non-work" area be made more physically accessible to the disabled employee?	___	___
	If "yes," please describe those circumstances. ______________________________ ______________________________ ______________________________		
11.	Are there any pending requests by employees with disabilities for reasonable accommodations that require modification of physical facilities?	___	___
12.	If the answer to question 9, 10, or 11 is "yes," has the institution gone back to review those requests and determine whether those requests, or some other reasonable accommodation, will have to be provided under the ADA?	___	___

Yes No

Accessibility of Work and Non-Work Areas for Future Employees

[Note: These questions relate to both newly hired employees with disabilities and current employees who may develop disabilities.]

13. Has the institution conducted an audit of all facilities to determine whether there are physical barriers to the employment of persons with disabilities? ___ ___

    (a) Alternatively, have copies of the facilities audit done in conjunction with Title II (program access requirements) been provided to the personnel department? ___ ___

[Note: Such an audit may be required under Title II. Facilities for future employees do not have to be changed if reasonable accommodations are provided, but these issues should be considered as part of "program access." It can also assist in the design of new facilities, alterations of those facilities, and future reasonable accommodation issues.]

14. Is there a procedure established for designs of new buildings to be reviewed with the human resources department to identify potential barriers for employees with disabilities? ___ ___

[Note: Compliance with the ADA Accessibility Guidelines or UFAS for new construction and alterations will eliminate most potential physical barriers in work and non-work areas, but the accessibility of individual work stations should be considered apart from ADAAG requirements. Moreover, in certain situations, employers may need to make accommodations beyond the ADAAG requirements.]

15. Is a process in place to allow the personnel department to review plans for alterations of existing facilities to incorporate, where appropriate, accessibility features for existing or future employees? ___ ___

16. If the institution is not auditing existing facilities that are solely for employee use, is there a procedure to do audits of facilities if a qualified employee with a disability is hired or an existing employee becomes disabled, in order to analyze removal of barriers and make reasonable accommodations in work and non-work areas? ___ ___

17. If facilities that are used solely by employees are not accessible, is there a plan for relocation of departments or work units to accessible locations, to make structural renovations, or to make other reasonable accommodations of future employees in those existing facilities? ___ ___

Yes No

18. Is the human resources/personnel department coordinating all audits with facilities and physical plant personnel? ___ ___

Specific Accessibility Issues for Current and Future Employees with Disabilities

[Note: These questions should be answered during the "audits" referred to in the first two sections of this audit. A separate audit should be conducted for each facility. These questions are not comprehensive; they merely highlight some of the more common physical accessibility issues. For a more complete description of accessibility features and facilities audits, see Chapter 8.]

Employees with Mobility Impairments

19. Is there accessible parking adjacent to the facility that meets the dimensions suggested in the ADAAG? ___ ___

20. Are there curb cuts and entrances that are accessible for persons who use wheelchairs? ___ ___

21. Is there a clear path of travel within the building to each of the various work areas in the facility? ___ ___

22. Can an employee using a wheelchair approach, enter, and exit each work area in the facility? ___ ___

23. Are non-work areas (e.g., locker rooms, break rooms, or lunch rooms) located in an inaccessible area, such as a mezzanine or basement, that is only accessible by stairs? ___ ___

If so:

(a) Are there just a few stairs, so that access can be provided with a ramp? ___ ___

(b) Would the cost of adding a platform lift, elevator, or other vertical means of access to that area be an undue hardship? ___ ___

(c) Are there alternatives, such as setting up a break room or lunch room on the main floor of the facility, that would not be an undue hardship or be less of a hardship than the alternative in (b)? ___ ___

(d) Is it possible to establish an alternative break room, lunch

		Yes	No
	room, or similar area in such a way that it can also be used by other employees, so that an employee with a disability is not unduly segregated from co-workers?	___	___
24.	Are all bathrooms for both men and women accessible to and usable by persons who use wheelchairs or, alternatively, has a single accessible bathroom or set of bathrooms been built that is well-marked, with directional signage at inaccessible bathrooms?	___	___
25.	Have water fountains been made accessible to persons who use wheelchairs by adding paper cup dispensers or lowering the fountains?	___	___
26.	If employees do not have their own phones and must use pay telephones, has at least one telephone been lowered to make it usable by a wheelchair user?	___	___
27.	Is there either an "area of rescue assistance" or alternative procedures for evacuation of employees with mobility impairments?	___	___
28.	Do any interior or exterior ramps or curb cuts exceed the recommended slope requirements or pose a danger or barrier to persons with mobility impairments?	___	___
29.	Are elevators wide enough to accommodate a wheelchair?	___	___

Employees with Hearing Impairments

		Yes	No
30.	Does the facility have visual alarms in conjunction with audible alarms for fire and emergency evacuation?	___	___
31.	In receiving, warehouse, and other areas where heavy equipment is in operation, are there visual alarms on equipment in conjunction with audible alarms to warn of the presence of that equipment?	___	___
32.	If any announcements are made using a loudspeaker system:		
	(a) Is there a process in place to communicate verbal announcements to employees with hearing impairments?	___	___
	(b) Are assistive listening devices appropriate?	___	___
33.	Are built-in or pay telephones hearing-aid compatible?	___	___
34.	Are certain built-in or pay telephones equipped with amplification and compatible with a TDD?	___	___

Yes No

Employees with Vision Impairments

35. Have elevators been modified to add braille and/or raised letter markings on elevator buttons and audible beeps to indicate floors? — —

36. Are hand rails available on both sides of stairways? — —

37. Are there obstructions or protruding objects along primary paths of travel within the building? — —

38. Have any directional or other large signs in the facility been prepared with appropriate large block lettering for those with partial vision loss? — —

39. Have the controls on vending machines or other similar machines used by employees with visual impairments been modified to add braille and/or raised letter markings? — —

40. Have signs for major, permanent spaces been marked with brailled and raised lettering (e.g., restrooms, classrooms, departmental offices, building names)? — —

Auxiliary Aids and Services for Effective Communication

41. Has the institution previously had experience in providing auxiliary aids or services to assist employees or students with vision, hearing or speech impairments in effective communication? — —

    (a) If so, has this provided reasonable accommodation for all the employee's job duties? — —

    (b) Have these successful experiences been communicated to the personnel department so that they can be conveyed to other managers? — —

    (c) Have these examples been or will they be communicated in managerial training sessions? — —

42. Does the institution have a person designated to become familiar with the techniques and technologies to provide effective communication to students, employees, and other beneficiaries? — —

    (a) If not, does the institution have other outside resources to provide advice on communications issues? — —

43. Does the institution currently employ people who require special assistive devices in order to perform their job duties, such as braille equipment

			Yes	No
		for persons with visual impairments and amplifying equipment for persons with hearing impairments?	___	___
44.		If the answer to question 43 is "yes," does the institution provide special assistive devices to employees with disabilities so that they may perform their job duties?	___	___
45.		Does the institution currently employ people with disabilities who require personal assistants, such as readers or interpreters, in order to perform their job duties?	___	___
	(a)	If so, has the institution met the communication needs of those employees?	___	___
46.		Has the institution provided special assistive devices or assistants to every disabled employee who requested it in the past?	___	___
47.		If the answer to question 46 is "no" (except for "personal" devices or assistance):		
	(a)	Describe the circumstances under which the institution has not provided assistive devices and/or assistants. ________________________________ ________________________________ ________________________________		
	(b)	Where requested aids or services have been denied, has a determination been made that it would be an undue hardship and/or that equally effective alternatives are available?	___	___
	(c)	Have equally effective accommodations been provided in the past?	___	___
	(d)	Has the institution reviewed recent requests from current employees with disabilities to ensure that the institution's response complies with the ADA?	___	___
48.		Has the institution conducted an inventory of and/or coordinated the need for and availability of:		
	(a)	Assistive listening devices	___	___
	(b)	Qualified interpreters (on- and off-campus)	___	___
	(c)	Braille keyboards and other special computers	___	___

Yes No

(d) Trained notetakers ___ ___

(e) Other assistive technologies ___ ___

Reasonable Accommodations to Permit Employees to Perform Jobs (EEOC Technical Assistance Manual Chapter III; CUPA Title I Manual Chapter 9)

49. Has a process been established to review reasonable accommodations requested by a newly hired employee or a current employee with a disability? ___ ___

If so, answer the following questions. If not, a written procedure is strongly recommended.

(a) Does this process include communicating with the employee to discuss alternative accommodations? ___ ___

(b) Does this process involve research into alternative accommodations that may be equally effective but less expensive? ___ ___

(c) Does this process include consultation, if necessary, with medical personnel to ensure that an accommodation will be effective and will enable the individual to perform the job duties without a direct threat to the health and safety of the individual or others? ___ ___

(d) Does this process include inquiries to other resources, such as state vocational rehabilitation services, if necessary? ___ ___

(e) Does this process provide for institutional budgeting for reasonable accommodations? ___ ___

(f) Is the process documented in each case? ___ ___

(g) Does the process provide written evidence that the accommodation was offered and accepted? ___ ___

(h) Does the process provide that any medical information acquired during this process be kept confidential? ___ ___

(i) Has the procedure to be followed by supervisors and department heads been established in writing and communicated to them? ___ ___

		Yes	No
50.	Does the institution have appropriate medical personnel available who can be contacted to discuss and/or review reasonable accommodation issues, medical records, requested accommodations, and/or communicate with an employee's physician?	___	___
	(a) Are these persons familiar with the various job functions in the institution?	___	___
	(b) Are these persons familiar with the ADA's standards?	___	___
51.	Has the institution made a determination whether it wishes to use the undue hardship/undue burden standard in response to requests for reasonable accommodations?	___	___
	If the institution elects to use the undue hardship defense in some cases:		
	(a) Is there a process in place for determining whether an accommodation is an undue hardship from a financial or operations standpoint and to document this decision?	___	___
	(b) Are there guidelines as to what costs, burdens, or other factors the institution wishes to defend as an undue hardship?	___	___
	(c) Have the persons involved in asserting the undue hardship defense weighed the risks of litigation?	___	___
	(d) Is this determination being made by the head of the institution or his or her designee, considering all of the resources of the institution?	___	___
	(e) Are determinations of undue hardship being made with input from legal experts familiar with the way the undue hardship standard has been applied?	___	___
52.	Are there any past requests for accommodations from existing employees that have been denied?	___	___
53.	Are there any past or pending requests for accommodations that may be renewed under the ADA?	___	___
54.	If the answer to question 52 or 53 is "yes," is the institution planning to reconsider those requests under the ADA standards?	___	___

Yes No

Illustrative Applications

55. Is the institution prepared to consider, on a case-by-case basis, the following types of reasonable accommodations and analyze whether they may pose an undue hardship:

   (a) Modification of work schedules —— ——

   (b) Restructuring jobs by assigning non-essential functions to other employees where an employee with a disability is unable to perform non-essential functions because of the disability —— ——

   (c) Alternative methods of communicating instructions or information —— ——

   (d) Modifications of work stations —— ——

   (e) Provision of special equipment —— ——

   (f) Part-time work schedules —— ——

   (g) Transfer of individuals unable to perform existing functions to vacant positions they can perform —— ——

56. Has the institution identified, in the context of its audit of hiring practices, jobs where in its opinion no reasonable accommodation would enable an employee with a particular disability to perform the essential functions of the job? —— ——

57. If the answer to question 56 is "yes," have supervisors been advised that they still must review on a case-by-case basis whether a particular individual can perform those functions with accommodations? —— ——

Application of Personnel Policies and Practices

58. Does the institution currently employ disabled employees for whom modification of existing policies and procedures may be required so that they may perform their job duties or not be subjected to discrimination or segregation? —— ——

   (a) Has a determination been made of what modifications of policies and procedures are necessary? —— ——

	Yes	No
(b) Are there any personnel policies or procedures that are imposed on persons with disabilities that are not imposed on other individuals?	___	___
Specific examples:		
(1) Attendance	___	___
(2) Medical examinations	___	___
(3) Limitations on insurance	___	___
59. Has the institution previously applied policies and practices in a way that tended to discriminate against an employee with a disability?	___	___
60. Has any disabled employee previously complained (formally or informally) about the application of particular institution policies, procedures, or practices?	___	___
61. If the answer to either question 59 or 60 is "yes":		
(a) Has a determination been made as to whether these policies and practices are defensible under the ADA?	___	___
(b) Are appropriate steps being taken to modify policies that are not defensible?	___	___
(c) Is a process in place to communicate modifications in policies, procedures, and practices to affected managers and employees?	___	___

Auditing Specific Policies and Practices (EEOC Technical Assistance Manual Chapter VII; CUPA ADA Title I Manual Chapter 8.)

[Note: Each of the following sections assumes that the institution has employees with various types of disabilities in its work force or may have such employees in the future. There is no violation of the ADA until a policy that has an adverse effect on persons with disabilities is applied to an employee with a disability. This checklist can be used to anticipate those issues and modify personnel policies and procedures if necessary. Alternatively, the audit can be used to review institutional or departmental policies when employees with disabilities are hired or existing employees become disabled.]

Training and Professional Development

		Yes	No
62.	Is all training (whether on-site or off-site) conducted in locations accessible to persons with disabilities?		
63.	Are written training materials available in alternative formats that can be used by an employee with a visual impairment?		
64.	Are oral training materials, including oral instruction, audio tapes, or sound tracks, available in some other accessible format for employees with hearing impairments?		
65.	Are appropriate auxiliary aids to remove communication barriers available for all training sessions?		
66.	Does the institution provide appropriate clarification of concepts and/or individualized instruction, if necessary, for employees with learning disabilities, mental retardation, reading disabilities, or other disabilities?		
67.	Are the modifications addressed in questions 62-66 provided in all training attended by employees with disabilities:		
(a)	That is conducted by the institution		
(b)	That is conducted by each department or work unit in the institution		
(c)	That is conducted specifically for institution employees by another entity		
(d)	That is conducted by other companies/consultants at outside locations for many businesses		
68.	Has the institution ensured that organizations that sponsor conferences attended by the institution's employees with disabilities are in accessible locations and presented in accessible formats?		
(a)	If not, is there a procedure for all departments that contract for outside training to ensure that training is accessible?		
69.	Does the institution provide the same financial support and opportunities for training, including professional meetings and conferences, to all employees regardless of disability?		

		Yes	No
70.	Does the institution provide necessary accommodations for any employees with visual impairments to have the same opportunities for professional reading and development as non-disabled employees?	___	___

Probationary Period

		Yes	No
71.	Are employees with disabilities treated the same as employees without disabilities during probationary periods?	___	___
72.	Are performance standards established for newly hired employees applied equally to all employees in similar positions?	___	___
73.	Are standards for conduct and behavior for newly hired employees applied equally to all employees?	___	___
74.	Does the institution honor or consider requests for reasonable accommodations during probationary periods, including:		
	(a) Elimination of marginal functions	___	___
	(b) Changes in the way the task is performed if that would not fundamentally alter essential job functions	___	___
	(c) The provision of equipment, modification of facilities, or other changes	___	___
75.	Are decisions to discharge employees with disabilities during probationary periods documented and reviewed with the personnel department to ensure that standards are applied equally?	___	___

Promotion, Advancement, and Transfer

		Yes	No
76.	Has the institution reviewed the promotion records of existing employees with disabilities to ensure that they have been provided with the same opportunities for advancement as other employees?	___	___
77.	Does the institution or do individual departments discriminate against or segregate employees with disabilities in terms of promotion, job assignments, classifications, or lines of progression?	___	___
78.	Have individuals with disabilities been provided with the same opportunities for promotion, job assignments, classifications, or lines of progression?	___	___
79.	Have opportunities for advancement that are provided to other employ-		

		Yes	No
	ees been provided to individuals with various types of disabilities, including learning disabilities?	___	___
80.	Are there any departments or programs that employ individuals with disabilities where individuals with disabilities have not advanced to other opportunities or positions to the same extent as employees without disabilities?	___	___
	(a) If so, have additional steps been taken to ensure that promotional opportunities are available on a non-discriminatory basis?	___	___
81.	Are managers instructed to provide the same encouragement of opportunities for advancement to persons with disabilities and the same access to information on promotional opportunities that they provide to other employees?	___	___
82.	Does the institution or would any individual manager seek to limit transfer or promotional opportunities for employees with disabilities (e.g., a manager that uses a wheelchair) because of the need to make modifications in facilities?	___	___
83.	Does the institution or would any individual manager consider limiting the promotional opportunities of an employee with a vision, hearing, or speech impairment based on the presumption that the employee could not perform the duties of higher-level positions?	___	___
84.	Does the institution or would any individual manager be inclined to limit the promotional opportunities of individuals with a history of psychological treatment, alcoholism, or other mental conditions out of concern that they could not handle the stress of a higher-level position, except to the extent that they pose a direct threat to themselves or others?	___	___
85.	If any answer to question 77 or questions 82-84 is "yes," has training been conducted and managers been advised of the ADA's requirements?	___	___
86.	Are there any formal promotion policies that actually discriminate or may tend to discriminate against persons with disabilities?	___	___
	(a) If so, are these policies and procedures defensible as job-related and consistent with business necessity?	___	___
	(b) If these policies and procedures are not defensible, are steps being taken to modify these policies and procedures?	___	___

Yes No

87. Does the institution have a policy or practice that places individuals with disabilities in separate lines of progression or in segregated units or locations that limit opportunity for advancement? — —

    (a) If so, is the institution taking steps to modify such policies and procedures? — —

Selection Criteria

Note: Each department or program should identify criteria used for selection or advancement of employees. For each such selection criterion, answer the following questions:

88. Has the institution and/or individual departments or programs established prerequisites for each position and/or class of positions (e.g., educational requirements, experience requirements or preferences, or licenses)? — —

89. Does the institution have any guidelines (formal or informal) under which applicants for employment will be rejected or employees will be denied promotion based upon past conduct or behavior? — —

90. Are there any physical conditions (e.g., certain types of back injuries) that will render a person ineligible for employment, promotion, or transfer to a particular position? — —

91. Are there any mental or psychological criteria that will render a person ineligible for employment, promotion, or transfer to a particular position? — —

92. If the answer to any one of questions 88-91 is "yes," have these "qualification standards" been reviewed to determine if they are either:

    (a) Facially discriminatory — —

    (b) Neutral but likely to have a disparate impact on persons with disabilities because one or more individuals are likely to be screened out because of their disabilities — —

93. Has the institution reviewed all other selection criteria (e.g., qualifications, minimum requirements, performance standards, preferences, or other standards for choosing employees for positions) to determine whether they are facially discriminatory against persons with disabilities or are likely to screen out or tend to screen out an individual with a disbility or a group of individuals with disabilities because of their disabilities? — —

Yes No

94. If the answer to question 92 or 93 is "yes," respond to the following questions and describe on separate forms the process used to identify and review selection criteria; if the answer is "no," an audit of selection criteria should be conducted focusing on the following factors:

    (a) Does the institution utilize selection criteria that are facially discriminatory against persons with disabilities (such as restrictions on employment of individuals with certain contagious diseases for food handling positions in cafeterias)? — —

    (b) Does the institution utilize criteria that, while they may affect persons without disabilities, will also screen out persons with particular disabilities (such as physical qualifications or denial of positions to persons with back injuries)? — —

    (c) Does the institution utilize any other criteria that are facially neutral but may tend to screen out persons with disabilities (such as past poor attendance resulting from alcohol abuse)? — —

95. If the answer to question 94(a), (b), or (c) is "yes," list all criteria that may have a "disparate impact" and answer questions 96-100.

96. Have all selection criteria been reviewed to ensure that they relate to essential functions of the job? — —

97. Have all medical or psychological qualification standards been reviewed by appropriate medical personnel to ensure that they are either necessary to perform essential functions of the job or that the presence of a particular condition would likely pose a direct threat to the health and safety of the individual or others? — —

98. If any selection criterion is being defended on the basis of safety or health, has the criterion been reviewed by medical personnel who have narrowly tailored the criterion to a point which is defensible based on a significant risk of future injury to the employee or others? — —

    (a) Is there a procedure in place to ensure that applicants are individually analyzed before they are screened out on the basis of a safety risk? — —

    (b) Does this procedure include consideration of reasonable accommodations that might reduce the risk? — —

Yes No

(c) Is the criterion based on medical or other objective evidence and not assumptions, stereotypes, or fears? — —

99. Have all qualification standards that might have an impact on a person with a disability been reviewed to determine whether they can be defended as job-related and consistent with business necessity? — —

100. If the review of selection criteria has revealed any that cannot be defended under the ADA's standards, have steps been taken to eliminate the use of these selection criteria and to omit references to these criteria in personnel materials? — —

Training

101. Have all persons involved in promotion and other employment decisions been advised that if a criterion that is being used to reject an applicant or employee for a position relates in any way to a physical or mental condition or might have to do with a physical or mental condition (e.g., a record of poor attendance that an applicant says was due to medical treatment or past alcoholism, which the employee claims is controlled), then the proposed decision needs to be reviewed with appropriate human resource and/or EEO/AA personnel familiar with the ADA before the adverse decision is communicated to the applicant? — —

102. Have all managers involved in promotion been trained that they should not assume that an individual is not interested in or not qualified for advancement solely because of disability and that qualifications for advancement must involve an individualized inquiry just as qualifications for hiring involve an individualized inquiry? — —

103. Has training been conducted or is training scheduled to advise managers of the ADA's prohibitions on discrimination in promotions? — —

Testing

104. Does the institution, department, or program administer any types of tests to existing employees in connection with training programs, evaluation, or advancement, such as skills tests, psychological tests, agility tests, or any other tests (other than medical examinations and drug tests)? — —

105. Does the institution rely on the results of test administered by some other entity (e.g., state examinations) in making decisions regarding current employees? — —

Yes No

If the answer to question 104 or 105 is "yes," answer the following questions regarding those tests. If the answer is "no," skip to the next section.

106. Is each type of employment test required of and administered to all similarly situated employees in a particular position, class of positions, or job category? ___ ___

107. Have all tests been reviewed to determine whether the test results accurately reflect the skills, aptitudes, and abilities necessary to perform essential job functions? ___ ___

108. Have all tests been reviewed to ensure that they do not test the sensory, manual, or speaking skills that might be impaired where those skills are not necessary to perform the essential functions of the job? ___ ___

109. Have persons involved in administering employment tests been advised that it may be necessary to make reasonable accommodations in testing, including:

  (a) Changes in physical location ___ ___

  (b) Changes in the way the test is administered if it measures impaired sensory, manual, or speaking skills not necessary to perform the job ___ ___

  (c) The use of alternate tests or test formats that measure the required skills and abilities instead of impairments ___ ___

  (d) The provision of auxiliary aids and services ___ ___

110. Have all psychological tests administered during employment been reviewed to determine whether the tests accurately reflect knowledge, skills, or abilities required, meet the direct threat standard, or otherwise satisfy the job-related and consistent-with-business-necessity standard for selection criteria? ___ ___

111. Does the institution or do individual departments have a procedure for consideration of substitutions of alternative tests if existing tests screen out an individual because of his or her disability? ___ ___

If so, please describe and attach any such procedure.

____

____

____

	Yes	No
112. Are all employees who are required to take tests informed in an accessible manner:		
(a) That auxiliary aids and other reasonable accommodations will be provided upon request during testing	___	___
(b) Of the procedures for requesting accommodations or substitutions	___	___

Performance Evaluations

	Yes	No
113. Are there any aspects of formal or informal performance criteria that measure physical tasks?	___	___
(a) If so, are these well-defined performance standards that are applied equally to all employees regardless of disability?	___	___
(b) Do all of these standards relate to essential job functions?	___	___
(c) Do all of these standards hold employees with disabilities to the same standards of production or performance as other employees regarding marginal job functions, where the employee's disability does not affect the ability to perform those marginal functions?	___	___
(d) Have all of these criteria been modified, if appropriate, to consider possible reasonable accommodations?	___	___
114. Does the institution or do individual departments consider the ability to perform or the performance of marginal job functions as part of its performance evaluation process?	___	___
If so:		
(a) Are these same standards applied to employees with disabilities?	___	___
(b) Have steps been taken to ensure that employees with disabilities are not downgraded on marginal functions they cannot perform because of a disability?	___	___
115. Are there other aspects of the performance evaluation that may tend to have a disparate impact on employees with particular disabilities (e.g., measurement of communication skills for employees with hearing or speech impairments)?	___	___

Yes No

If so:

(a) Do all of these criteria accurately measure performance of the essential functions of the job? ___ ___

(b) Have these standards been written to focus on accomplishment of particular goals and objectives rather than performance of tasks in a particular way? ___ ___

116. Are there performance criteria that focus on interpersonal skills and interaction with co-workers? ___ ___

If so:

(a) Have these criteria been written to focus on performance of the actual tasks of the job, rather than a more general evaluation of social skills? ___ ___

(b) Have managers been trained that they cannot apply these standards in a discriminatory manner to persons with disabilities (e.g., to downgrade an employee with a psychological disability that was reclusive or an employee who was shunned by co-workers because of stereotypes or fear)? ___ ___

117. Are employees provided with all accommodations that may be necessary for effective communication during the performance evaluation process? ___ ___

Layoff and Return-to-Work Policies

118. Do the institution's layoff or return-to-work policies expressly treat employees with disabilities differently from employees without disabilities? ___ ___

(a) If so, is this distinction defensible under the ADA? ___ ___

119. If preferences are given in layoffs to employees who are cross-trained and able to do multiple job functions or multiple jobs:

(a) Are these standards communicated to all employees? ___ ___

(b) Are these standards applied equally to all employees regardless of disability? ___ ___

(c) Has the determination been made that these standards can be justified as job-related and consistent with business necessity? ___ ___

		Yes	No
120.	If cross-training is required of all employees, have all of the skills required in all the positions been identified as essential functions of each "position" and included as essential functions in job or position descriptions?	—	—
121.	In situations where positions are eliminated or combined,		
	(a) Is a new position description developed identifying all essential functions of the remaining jobs?	—	—
	(b) Are these decisions reviewed by the human resources side of the personnel department to ensure that there is a legitimate, non-discriminatory reason for the way the positions were merged and that the decision was not motivated by discriminatory animus?	—	—
	(c) Are persons with disabilities who are not selected because they are unable to perform the essential functions of the combined job offered transfers to other positions that they are qualified to perform?	—	—
122.	Are layoffs and recalls in a department handled on the basis of seniority?	—	—
	If so:		
	(a) Would this be qualified as a bona fide seniority system for Title VII purposes?	—	—
	(b) Are employees with disabilities treated less favorably than others under this system?	—	—
123.	If layoffs and recalls are not based solely on seniority, are there criteria that may tend to have a disproportionate impact or screen out persons with disabilities on the basis of their disabilities?	—	—
	(a) If so, have these criteria been reviewed to ensure that they are job-related and consistent with business necessity?	—	—

Demotions and Terminations

		Yes	No
124.	Are the same performance standards applied to all employees regardless of disability?	—	—
125.	Are performance standards communicated in a manner that ensures		

Yes No

comprehension by persons with disabilities, including alternative formats, use of auxiliary aids, and individualized instruction where needed? ___ ___

126. Is a system in place for documenting adverse decisions regarding employees with disabilities that is equivalent to the level of documentation for other employees? ___ ___

127. Have all managers been instructed and trained not only to avoid discrimination against persons with disabilities, but also to avoid remarks about persons with disabilities that might be adversely interpreted or misinterpreted? ___ ___

128. Are the same standards for conduct that may result in discipline or discharge applied to all employees regardless of disability? ___ ___

129. Have all employees been advised of the standards for conduct and behavior in a manner that ensures comprehension by persons with disabilities? ___ ___

130. Have all managers been advised that they are not required to and should not give employees with disabilities "special treatment" by evaluating them on a lower standard or disciplining them less severely than similarly situated employees? ___ ___

131. Are reasonable accommodations provided during the performance evaluation process, warning or probationary periods, counseling sessions, or similar proceedings for allowing employees to improve, or during other proceedings that might result in termination? ___ ___

For example,

(a) Effective ancilliary aids for communication during investigative meetings ___ ___

(b) Provision of notices, warnings, or documents in accessible formats ___ ___

(c) Additional instruction and/or training, if necessary, for employees with learning disabilities ___ ___

(d) Consideration of reasonable accommodations in the way the job is performed even after documented poor performance but prior to termination ___ ___

		Yes	No
132.	Have all managers been advised they should not go forward with discipline of an employee with a disability without contacting the human resources/personnel or EEO/AA department if there is a claim of discrimination or request for accommodations, or if the reason for termination has some connection to the employee's disability?	___	___
133.	ADA and Title VII cases can be heard by juries. Because of new laws, managers should be advised of the potential liability and be able to affirmatively answer the following questions regarding demotions, terminations, or other adverse action against a member of a protected class.		
(a)	Have the same standards (performance or conduct) been applied to any similar situations in my department or program?	___	___
(b)	Are there individuals in other programs that have been given different treatment for this same type of conduct or performance, and, if so, is there a legitimate reason for treating individuals in this department differently?	___	___
(c)	Was the employee adequately advised of the standards for conduct or performance and the institution's expectations?	___	___
(d)	Was the individual given an opportunity to improve or to meet particular standards?	___	___
(e)	Is the reason for the action one that would seem fair to an outside person?	___	___
(f)	Is the discipline proportional to the conduct or performance?	___	___
(g)	Is the process for discipline, demotion, or termination being handled in a fair and objective manner?	___	___
(h)	Is there any reason to suspect that discriminatory animus or stereotyping is playing a role in this decision?	___	___
134.	Is a procedure in place to ensure that all proposed demotions and terminations of employees with known disabilities are reviewed by the human resources/personnel or EEO/AA department?	___	___

Compensation

135. Are all pay increases, cost-of-living adjustments, bonuses, raises, and

Yes No

other forms of compensation administered on an equal basis regardless of disability? ___ ___

136. Are all employees with disabilities provided with the same or comparable pay and benefits as similarly situated employees without disabilities? ___ ___

137. Are supervisors responsible for setting compensation aware that they cannot reduce pay to an employee with a disability because of the elimination of a marginal job function that the employee cannot perform because of his or her disability and that an employer can give that employee other marginal job functions that he or she can perform? ___ ___

138. Are supervisors and managers aware that they cannot reduce the pay of an employee with a disability because the institution has had to provide a reasonable accommodation to that employee, or that they cannot require the employee to pay for that accommodation? ___ ___

Transfers as a Reasonable Accommodation

139. Is there a procedure in place in the institution and/or individual departments to consider requests for transfers of employees with disabilities who are unable to perform their existing jobs even with reasonable accommodation? ___ ___

If the answer to question 139 is "yes," answer the following questions; if the answer is "no," the EEOC says such requests must be considered.

140. Does the institution seek to identify other vacant positions that the individual is qualified to perform? ___ ___

    (a) Does this include other departments throughout the institution? ___ ___

[Note: The EEOC regulations are unclear on the scope of this obligation.]

    (b) If there is no vacant position comparable in salary and status, does this search include comparable positions that may become open within a reasonable period of time? ___ ___

141. If the employee is transferred, does the institution comply with its customary policies on salary? ___ ___

[Note: The institution does not have to keep employees at the same salary but could not apply its policies in a discriminatory manner.]

Yes No

142. If there is an open position that the employee is minimally qualified to perform:

(a) Is the employee placed in this position? or ___ ___

(b) Is the employee permitted to compete for this position and selected if the employee is the most qualified? ___ ___

[Note: The EEOC regulations and guidance are not clear which alternative is required. Strong arguments exist that the ADA only requires (b), but the EEOC has not yet issued its interpretation.]

Leaves of Absence

143. Does the institution have policies regarding sick leave, vacation, and other paid leaves of absence? ___ ___

If so:

(a) Are all leaves equally available to all similarly situated employees? ___ ___

(b) Are leave policies administered on a non-discriminatory basis? ___ ___

144. Does the institution have any existing policy on providing unpaid leaves of absence or sabbaticals? ___ ___

(a) If so, are there time limits set on the availability of leave or the reasons that leave will be allowed? ___ ___

(b) Do any of these conditions discriminate on the basis of disability or association with persons with disabilities? ___ ___

(c) Are requests for medical or disability leave treated any less favorably than requests for unpaid leave for any other reasons (e.g., sabbaticals, family leave)? ___ ___

145. Is there a cap placed upon the length of medical and disability leave that may be taken before an individual loses his or her rights to employment or re-employment? ___ ___

(a) If so, are extensions considered case by case upon request as a reasonable accommodation? ___ ___

	Yes	No
146. If there is no institutionwide policy, answer the following questions regarding departmental policies or practices:		
(a) Are decisions on the length of unpaid medical or disability leave with a right to return to substantially equivalent employment based upon an individualized analysis of the need for individuals performing such job functions and undue hardship?		
(b) Are individuals who are unable to return to work at the time the department or program needs to permanently fill the position offered opportunities to transfer to other positions?		
(c) Has the institution determined that there are legitimate business justifications for the differences in policies and practices among various departments and programs?		
147. Are employees who are unable to return to a position because of a disability offered transfers to other positions within the institution?		
148. Is the institution prepared to consider as a reasonable accommodation requests for unpaid leave or an extension of leave beyond the institution's or departments' policies, and to make a determination of when a requested leave of absence or extension of leave to an employee with a disability would constitute an undue hardship?		

Attendance Control Policy

	Yes	No
149. Does the institution have a neutral attendance control policy that is applied to all similarly situated employees regardless of disability?		
150. Have all supervisors been advised that they should not apply a neutral attendance control policy in a way that results in adverse action against an employee with a disability without having the matter reviewed by the human resource/personnel department to determine whether reasonable accommodation requests have been made and/or reasonable accommodation obligations satisfied?		
151. If the institution does not have a general attendance control policy and attendance is regulated by individual departments or programs (e.g., abuse of leave or sick leave; non-performance of essential functions), have each department or program answer the following questions:		
(a) Are expectations for attendance applied to all similarly situated employees regardless of disability?		

Yes No

(b) Are expectations for attendance communicated to all employees regardless of disability? ___ ___

(c) Are any standards applied to employees with disabilities that are not applied to similarly situated employees who may have problems with performance for personal reasons (e.g., divorce, child care problems, outside consulting or businesses)? ___ ___

(d) Is the same documentation required for absences of all employees regardless of disability? ___ ___

152. If there are differences in the absence control policies applied by various departments and programs, answer the following questions:

(a) Are there employees in different departments that are similarly situated to each other in the type of work or expectations for attendance? ___ ___

(b) Is there a legitimate business justification for the differences in treatment among departments? ___ ___

Relationship or Association with an Individual with a Disability

153. Are employees who have dependents with disabilities provided with the same access to all benefits of employment as employees with dependents who do not have disabilities (e.g., access to day care services, educational funding, preferential admission, insurance)? ___ ___

154. Are there any policies, procedures, or practices that would limit an individual's ability to associate with persons with disabilities (e.g., restrictions on working with AIDS patients)? ___ ___

155. If the answer to either question 153 or 154 is "yes," has a determination been made that changing the policy would be an undue hardship or a fundamental alteration of a program or that the policy is otherwise defensible (e.g., under the direct threat standard)? ___ ___

156. Would the institution or would an individual manager be inclined to fire (or refuse to hire) an individual because the individual has a spouse, child, or other dependent who has a disability? ___ ___

(a) If so, has this been corrected? ___ ___

157. Have all managers involved in discipline and discharge been trained that they may not assume that an individual who has a family member or other

Yes No

dependent with a disability will be unreliable, or have to use leave time, or be absent from work in order to care for that dependent? ___ ___

158. Have all managers been trained that they may not fire an individual because the individual has a relationship or association with a person or persons who have disabilities, such as a person who does volunteer work with people who have AIDS? ___ ___

Fringe Benefits

159. Does the institution provide equal access to fringe benefits for all eligible employees regardless of disability, including:

    (a) Cars ___ ___

    (b) Travel and entertainment allowances ___ ___

    (c) Admissions to the institution or reduced tuition ___ ___

    (d) Other perks ___ ___

160. Have all physical facilities in non-work areas that might be considered fringe benefits (e.g., cafeterias, gyms, lounges):

    (a) Been provided to employees with disabilities on an equal basis ___ ___

    (b) Had appropriate accommodations made to permit employees with disabilities access to and use of those facilities ___ ___

161. Has all transportation provided by the institution for use by its employees been made accessible to employees with disabilities, including:

    (a) Transportation between employer facilities ___ ___

    (b) Transportation to or from mass transit ___ ___

    (c) Transportation provided on an occasional basis to employer-sponsored events ___ ___

Social and Recreational Programs

162. Are employees with disabilities provided equal opportunities to participate in all social and recreational programs sponsored by the institution, including but not limited to sports teams, leagues, and recreational activities? ___ ___

		Yes	No
163.	Have managers been instructed that they should seek to include and not segregate employees with disabilities in social and recreational functions?	___	___
164.	Are steps being taken to ensure that when departments or the school schedules social events that may be attended by employees with disabilities:		
(a)	These are scheduled in accessible locations (e.g., avoid picnic areas that are not accessible to wheelchair users)	___	___
(b)	Barriers to frequently used areas are removed (e.g., steps leading to courtyards used for cocktail parties)	___	___
(c)	These events are appropriately communicated to employees with disabilities	___	___
165.	Has the institution sought the input of employees with disabilities to determine whether there are additions to or changes in the institution's social and recreational programs that would enable the employees to have better access to those programs?	___	___
166.	If individuals with disabilities are excluded from any social or recreational activities based upon a risk of injury, is this determination made based upon objective evidence after an individualized analysis using the direct threat standard?	___	___

Insurance (Including Medical, Life, and Disability)

		Yes	No
167.	Has the institution reviewed all of its insurance policies to identify exclusions, including exclusions for pre-existing conditions, and ensured that those exclusions apply on an equal basis to all applicants and employees?	___	___
168.	Are employees with disabilities expressly excluded from access to any insurance offered by the institution (including medical and life insurance)?	___	___
(a)	If so, has a determination been made that there is an actuarial basis for the exclusion?	___	___
169.	Has the institution met with its insurance broker or agent to address the need to cover employees with disabilities and ensure that there are actuarially sound reasons for any exclusions?	___	___
170.	Do the institution's insurance policies exclude coverage of spouses or children because of disabilities while non-disabled dependents are covered?	___	___
(a)	If so, is there an actuarial basis for this exclusion?	___	___

Yes No

(b) Have spousal and family coverages been reviewed to ensure that they comply with the ADA? ____ ____

171. Does the institution refuse to hire an individual because of the applicant's insurance costs or the costs of insurance for a spouse or child? [This will likely violate the ADA.] ____ ____

172. Has the institution considered permissible alternatives, such as pre-existing exclusion clauses or increased co-payments of high-risk employees, regardless of disability? ____ ____

173. Does the institution or its insurer apply higher standards or criteria to individuals added to policies outside an open enrollment period (e.g., because of a covered event) than they apply during an open enrollment period? ____ ____

If so:

(a) Are the differences related solely to procedures (e.g., medical examinations) or otherwise permissible limitations (e.g., pre-existing condition clause)? ____ ____

(b) Do the higher criteria result in the denial of insurance to individuals because of disabilities that would be impermissible if applied during open enrollment periods? ____ ____

174. If the institution does not provide its own insurance or is subject to a state insurance policy, have steps been taken to ensure that the state's policies comply with the ADA? ____ ____

175. Are the institution's life insurance policies administered on a nondiscriminatory basis? ____ ____

Specifically:

(a) Are there any absolute exclusions from basic policies or umbrella policies based upon medical conditions (e.g., AIDS, drug addiction, prior psychiatric care)? ____ ____

(b) Are there other exclusions or determinations of insurability that completely deny insurance to individuals because of disabilities? ____ ____

If so, has a determination been made that there is an actuarial basis for the exclusion? ____ ____

		Yes	No
176.	Has the institution analyzed its disability insurance or disability retirement policies, procedures, or practices to determine if there are conflicts with other obligations under the ADA?	___	___

Smoking

		Yes	No
177.	Does the institution deny employment, insurance, or other benefits to persons who use cigarettes? [Nicotine addiction may or may not be protected.]	___	___

Drug Screening

		Yes	No
178.	Does the institution or do individual departments conduct random, periodic, or for-cause drug screening of any employees?	___	___
179.	Are drug tests administered to all similarly situated employees, regardless of disability?	___	___
180.	Are these drug screens limited to tests for the illegal use of drugs rather than the lawful use of drugs?	___	___
181.	If the tests are not limited to the current illegal use of drugs (e.g., for-cause tests that may also reach alcohol use or prescription drug use), are these tests administered based on neutral standards regardless of disability?	___	___
182.	Has the institution made a determination that its drug test procedures are accurate (e.g., appropriate chain of custody, confirmation testing, and qualified laboratories)?	___	___
183.	Does the institution utilize some type of medical review officer to oversee all drug tests and verify that the results are due to the illegal use of drugs and not lawful uses or that any proposed discipline based upon the lawful use of drugs is defensible on some other basis?	___	___
184.	Are the results of all drug tests kept confidential and segregated from the employee's personnel file?	___	___

Drug and Alcohol Rules

		Yes	No
185.	Are all managers aware that drug addiction and alcoholism are covered disabilities?	___	___
186.	Does the institution have a policy on illegal drug use?	___	___

(a) Does this policy provide for discipline or termination for

Yes No

any illegal drug use, as distinct from specialized circumstances (on-campus use, conviction of sale)? ___ ___

(b) Are the rules on illegal drugs applied regardless of substance, circumstances, or employee status? ___ ___

187. Do the institution's rules cover use by an addict off the institution's property? ___ ___

[Note: The ADA provides that any employer can take adverse action based upon illegal drug use. However, there is a possibility that an employer could not terminate a self-disclosed addict if it would not terminate a weekend casual drug user, unless the addict was otherwise unqualified.]

188. Are the institution's policies on alcohol consumption on campus clearly articulated and applied to all individuals regardless of disability? ___ ___

189. Are the standards for conduct or behavior that are applied to alcoholics or drug addicts also applied to persons without disabilities? ___ ___

190. Are alcoholics and drug addicts subjected to no more stringent standards of performance, conduct, or behavior than employees without disabilities? ___ ___

Example: Are faculty whose performance is failing due to substance abuse (e.g., missed classes or poor communication) held to the same standards as faculty who miss classes for other reasons or are poor communicators? ___ ___

Medical Monitoring

191. Does the institution conduct any type of medical monitoring or medical examinations of current employees, such as:

(a) Examinations when an employee becomes disabled to determine if the employee can perform the essential jobs with or without reasonable accommodation ___ ___

(b) Examinations when an employee wishes to return to work after injury or illness ___ ___

(c) Examinations if an employee requests a reasonable accommodation on the basis of a disability ___ ___

(d) Medical examinations and medical monitoring required by the U.S. Department of Transportation, OSHA, or other statutes that require employees exposed to toxic or

			Yes	No
		hazardous substances to be medically monitored at specific intervals	—	—
192.	If any answer to question 191 is "yes," answer the following questions for each type of monitoring:			
	(a)	Is the monitoring done of all employees, regardless of disability, in a particular category or classification?	—	—
	(b)	Is there a legitimate business justification for the monitoring?	—	—
	(c)	Are the results of all medical monitoring kept confidential, segregated from the employee's personnel file with access limited in accordance with the ADA's requirements?	—	—
	(d)	Are the results of monitoring used in a manner consistent with the ADA?	—	—
193.	Does the institution disclose any medical information obtained during medical monitoring to supervisors or other employees of the institution outside of the personnel department?		—	—
	If so, does the institution have a procedure in place to ensure that:			
	(a)	The ADA's confidentiality rules are followed and disclosure limited to those with a need-to-know	—	—
	(b)	That the results of medical examinations or inquiries are only used consistently with the ADA	—	—
194.	Does the institution conduct any medical examinations pursuant to state or local laws, such as periodic testing for AIDS or the HIV virus?		—	—
	(a)	If so, has the institution reviewed these tests to ensure that the testing and the way the results are used meet the ADA's requirements that they be job-related and consistent with business necessity or required to avoid a direct threat to health and safety?	—	—
	(b)	Have any tests that do not meet the ADA's standards been eliminated as pre-empted?	—	—

Employee Assistance Programs

195.	Does the institution administer employee assistance programs?	—	—

Yes No

196. Is an employee's voluntary involvement in an employee assistance program or wellness program kept confidential and not used to discriminate against an employee? ___ ___

197. If an employee is referred to an employee assistance program as an alternative to discipline, is the institution's access to medical information limited to a medical determination that the employee has successfully completed the program and is able to return to work? ___ ___

Workers' Compensation

198. Are the individuals responsible for administering workers' compensation claims coordinating with the individuals responsible for ADA compliance? ___ ___

199. Have procedures for responding to and processing workers' compensation claims been reviewed to ensure that they satisfy the ADA's requirements for making reasonable accommodations of employees with disabilities? ___ ___

200. Have all persons involved in administering workers' compensation claims been advised that no employee should be terminated or removed from the payroll until that decision has been reviewed by the person responsible for ADA compliance? ___ ___

201. Has the institution reviewed any requirements under state workers' compensation laws to determine whether they conflict with ADA requirements, such as laws that would require exclusion of an individual from a position likely to jeopardize the person's health or safety or exacerbate an earlier workers' compensation injury if this does not satisfy the ADA's direct threat standard? ___ ___

[Note: ADA requirements supersede any conflicting state workers' compensation laws.]

202. Have procedures for establishing "light duty" positions to respond to medical restrictions on workers recovering from job-related injuries been reviewed by and coordinated with persons responsible for ADA compliance to ensure consistency? ___ ___

Provision of Training for ADA Compliance

203. Does the institution currently have a training program set up for its managers, supervisors, and employees regarding compliance with the ADA? ___ ___

204. Has the institution designated management personnel responsible for ADA compliance and addressing employees' questions regarding the ADA? ___ ___

	Yes	No
205. Has the institution instructed all employees to contact designated management personnel trained to handle ADA issues with any questions they may have?	___	___

6.4. STUDENT PERSONNEL ISSUES

The U.S. Department of Labor has consistently held that students who receive compensation from colleges and universities for services they perform, including paychecks, room and board, reduction in tuition, or other methods of compensation, are "employees" for the purposes of the Fair Labor Standards Act (FLSA) (e.g., for minimum wage and overtime requirements). While there may be exemptions available (i.e., to minimum wage requirements), the DOL treats these as employment relationships.

Any student who is an employee for purposes of the FLSA is also an employee within the meaning of Title VII and the ADA. The ADA's definition of "employee" incorporates Title VII, which is in turn derived from the FLSA. Accordingly, any student who is employed by a college or university is entitled to all of the same protections given to employees under both Title I and Title II of the ADA. The same principle was applied under Section 504. The DOEd regulations stated that "a recipient that employs any of its students may not do so in a manner that violates" [the prohibitions on discrimination in employment in subpart b of the regulations]. 34 C.F.R. § 104.46(c).

The range of student workers who are considered employees under the federal labor laws, including Title VII and the ADA, include:

- Working students (i.e., individuals in ordinary jobs who happen to be taking classes at the institution)
- Work-study students who have been placed in hourly or part-time positions in different departments for a salary (sometimes tuition credit)
- Research assistants or graduate assistants who receive a stipend for services
- Resident hall advisors who receive room and board in exchange for counseling and other duties

Students Who Are Not Employees

Not every student who performs activities that might be compensable outside a campus environment is considered an employee. The DOL decisions state that students who work on a campus newspaper or law students who work in a legal aid clinic on a voluntary basis as part of extracurricular activities are not employees of the institution. Similarly, students who perform certain activities for course credit or as part of their academic programs are generally not considered employees of the institution. Opportunities for participation in these activities are analyzed under general requirements for program access in academic and non-academic services, but the employment rules under Title I are inapplicable. For example, it may be the institution's obligation to provide an interpreter for a student to do student teaching as a program access requirement, but the college would not have to provide student teachers with the same benefits given employees.

Off-Campus Employment

Another category of student workers are those employed in off-campus or on-campus jobs by vendors or tenants of the institution, either on their own or through a referral by the institution. The student employed in an off-campus bookstore that receives referrals of qualified applicants from the college, and the student employed in an on-campus bookstore managed under a subcontract to the college, are generally in the same situation. In most cases neither student is considered an employee of the institution and the college is not a joint employer for wage and hour purposes. The actual employer (the company that operates the store) would have obligations under Title I if it has more than 25 employees (lowered to 15 employees in July 1994); the college would not have any obligations regarding reasonable accommodations or benefits. If the college is involved in the "placement" process, however, that process is subject to the ADA's program access requirements. (A few courts have held that a college's placement efforts could be analyzed as those of an employment agency.) Program access in this context includes taking steps to ensure non-discrimination by individuals wishing to hire students as a condition of receiving referrals or advertising jobs on-campus.

Student Personnel Offices

Many colleges and universities have a department to handle student personnel separately from other personnel matters. While there may be legitimate administrative reasons for doing so, especially if most students on work-study or part-time employees are not provided the same protections as full-time employees under the college's policies and procedures, there are possible disadvantages if there is not close coordination between student personnel and the human resources/personnel department.

The EEOC does not distinguish in its regulations between employees who may be students and those who are not. A part-time student worker in a clerical position would argue that he or she is entitled to the same treatment for ADA purposes as all similarly situated part-time clerical workers. The student employee is entitled to make requests for reasonable accommodations and be provided with auxiliary aids and services, and he or she is entitled to non-discrimination. A student who is unable to perform duties in one area might, under EEOC regulations, have to be considered for transfer to another position that the student was qualified to perform if the student was unable to do his or her initial job duties because of a disability.

It is unclear whether the courts will apply different standards to the concepts of reasonable accommodation and undue hardship when dealing with student employees, especially those on work-study or being paid in-kind, than they apply to other support staff employees. For the purposes of the self-evaluation, the institution should assume that all of the rules contained in Title I of the ADA apply to all student employees.

SAMPLE AUDIT OF STUDENT PERSONNEL ISSUES	Yes	No
Employment of Students		
1. Are employees who are students of the institution subject to the same policies, procedures, and practices on hiring, compensation, and employment as other employees?	___	___
2. If the answer to question 1 is "yes," were all student employees covered by the audits conducted in Chapters 6.2 and 6.3?	___	___

Yes No

3. If the answer to either question 1 or 2 is "no," has the institution identified the individuals responsible for students on work-study and other student employees and conducted an audit of student personnel issues in accordance with the following questions? ___ ___

4. Are all policies, procedures, and practices applicable to student employees applied to similarly situated employees regardless of disability? ___ ___

5. Are there procedures for ensuring non-discrimination in the selection of students for work-study or employment? ___ ___

6. Is there a procedure in place for handling reasonable accommodation requests from student employees? ___ ___

7. Are auxiliary aids and services provided where necessary for student employees to perform job functions? ___ ___

8. Are opportunities for employment of students made available on a non-discriminatory basis, in the most integrated setting possible, without segregation? ___ ___

9. Is there a procedure in place to ensure equal treatment of student employees and similarly situated employees who are not students? ___ ___

10. Has the institution conducted an audit of student personnel issues that covers all of the issues addressed in Chapters 6.2 and 6.3 that are applicable to student employees? ___ ___

[Note: These questions have not been repeated here. An audit should be conducted making appropriate modification of the questions to fit student employees (e.g., selection for work-study instead of hiring; omission of questions that are not relevant to part-time employees).]

Off-Campus Employment, Referrals, or Placement for Students Employment

11. Does the institution place or assist in the placement of students in part-time or temporary jobs as an indirect form of financial assistance? ___ ___

If the answer is "yes," answer the following questions. If the answer is "no," skip to the next section.

[Note: On-campus recruiting and placement of graduates are covered in Chapter 7.]

Yes No

12. Does the institution require all employers who seek to use the institution for referrals or placement to agree not to discriminate on the basis of disability as well as other requirements? ___ ___

13. Does the institution monitor the employment practices of employers who seek referrals or placements from the institution and terminate relationships with those employers that discriminate on the basis of disability or other protected classes? ___ ___

14. If one or more employers do discriminate on the basis of disability, does the institution ensure that the opportunities available for off-campus employment are, as a whole, accessible to students with disabilities? ___ ___

15. Is there a process available for the institution to educate employers on the availability of funds and other assistance for hiring students with disabilities for part-time or temporary employment? ___ ___

16. Does the institution require vendors or other providers of employment on campus to agree not to discriminate against student employees on the basis of disability? ___ ___

17. Does the institution preclude employers who wish to recruit students from taking specific discriminatory steps against student employees with disabilities, including:

    (a) Making unlawful pre-employment inquiries ___ ___

    (b) Refusing to consider requests for reasonable accommodations ___ ___

    (c) Refusing to consider applicants for employment that may require reasonable accommodations ___ ___

    (d) Refusing to hire otherwise qualified students with disabilities because of their inability to perform marginal job functions ___ ___

    (e) Using selection criteria to screen out students with disabilities on the basis of their disability that are not job-related and consistent with business necessity ___ ___

    (f) Engaging in any other practice that violates Title I of the ADA ___ ___

6.5 FACULTY AND TEACHING POSITIONS

Faculty and other teachers have been considered employees for the purposes of Title VII since 1972. Most colleges and universities are familiar with many cases involving the hiring of faculty and challenges to tenure on the basis of race and sex, and are aware of the likely growth in age discrimination litigation when the mandatory retirement exception is eliminated on January 1, 1994. The ADA makes no distinction between teaching positions and administrative or support functions. For example, the EEOC regulations under Title I include "award of tenure" as merely one example of prohibited discrimination. 29 C.F.R. § 1630.4(b).

Decisions in race and sex discrimination cases under Title VII recognize that the relationship of a teacher or faculty member (especially a tenured faculty member) to a postsecondary institution differs from most employment relationships. The courts recognize that decisions regarding qualifications for teaching positions are not amenable to easy quantification. Many courts tend to defer to an institution's judgment and application of its selection criteria, especially where individuals have had an opportunity to utilize grievance procedures. No deference is usually given, however, where there is evidence of animus or use of stereotypes in the decision-making process.

The ADA is likely to present many difficult problems for higher education institutions in faculty recruitment, interviewing, and selection, the award of tenure, and the termination of employment. The problem areas include the following.

Difficulties Defining the Essential Functions of Teaching

There is seldom a "position description" for each individual teaching job. Standards for qualifications and experience are usually well-defined, and departments frequently establish standards for courseload, office hours, and certain other minimum expectations. But it is much more difficult to describe the essential functions of teaching. Is the task communication of ideas or communication in a manner that can be understood by all students? What is the allocation of duties among teaching, research, and administrative responsibilities? At what point is an individual who can no longer remember information or articulate concepts unable to perform the job of teaching?

Provision of Auxiliary Aids and Services

The ADA's requirements for auxiliary aids and services may entail the provision of interpreters for lectures, readers or assistive technologies for teachers with vision disabilities, and other types of accommodations. Some schools have had successful experiences with faculty members who are or became blind, deaf, or unable to speak due to accidents or illness. These situations are somewhat uncommon and frequently involve accommodations of tenured faculty. The requirement of reasonable accommodations and auxiliary aids and services applies to all teaching positions, including part-time adjunct and full-time faculty positions. For example, an institution could not deny employment to an adjunct faculty person to teach one course because of that person's need for assistive technologies unless providing those technologies would be an undue hardship.

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Psychological Disorders and Alcoholism

Persons suffering from alcoholism or those with other psychological disorders are protected under the ADA. A professor who fails to attend classes allegedly because of alcohol problems cannot be subjected to any more stringent standards because of alcoholism than a professor going through a messy divorce or one unable to attend classes because of extensive outside consulting.

Lack of EEO Oversight

In most institutions the human resources/personnel office, EEO office, and the institution's legal counsel serve in an advisory capacity to the provost, vice president of academic affairs, or the dean of the faculty, but have no direct authority over faculty issues. In many institutions there has not been extensive training of faculty members in their EEO obligations when hiring or making tenure decisions. The EEO office and legal counsel are frequently not consulted on faculty issues before a claim is filed.

For some issues identified in Chapters 6.2 and 6.3, the human resources/personnel department has jurisdiction over faculty issues, including insurance, compensation, and campuswide personnel policies and practices. A separate audit will have to be conducted that covers other unique issues, such as faculty selection, award of tenure, evaluation of performance, and termination. Each institution will have to determine whether this audit will need to be conducted on a centralized or decentralized basis.

SAMPLE AUDIT OF FACULTY EMPLOYMENT ISSUES

Yes No

Essential Functions

1. Has the institution or have individual departments devised a description of the "essential functions" of faculty positions that include, in one document or by reference:

   (a) Rules of conduct and behavior ___ ___

   (b) Expectation for hours, attendance, etc. ___ ___

   (c) General standards for research or writing ___ ___

   (d) The tasks of teaching ___ ___

   (e) Administrative responsibilities ___ ___

2. If the answer to any of the above questions is "no," the department should analyze the issues identified in the first part of Chapter 6.2 regarding job descriptions.

Qualification Standards for Hiring

3. Does the institution or have individual departments established prereq-

Yes No

uisites for various teaching and faculty positions (e.g., educational requirements, experience requirements, or preferences)? ___ ___

4. Has the institution conducted an audit of qualification standards for hiring faculty covering all of the issues in the second part of Chapter 6.2? [All of the issues on setting qualification standards are equally applicable to faculty hiring practices.] ___ ___

5. Does the institution engage in recruiting for or advertising of teaching or faculty positions? ___ ___

6. If so, audit these issues using the questions in the part of Chapter 6.2 regarding non-discrimination and recruitment in advertising.

7. For each individual or department that conducts hiring of faculty, answer the following questions:

   (a) Are hiring procedures, including interviews, carried out in physically accessible locations, accessible to applicants with disabilities? ___ ___

   (b) Are auxiliary aids and services provided or available during the interview process? ___ ___

   (c) Do all steps of the application and interview process for each department utilize alternative formats or services? ___ ___

   (d) Have all individuals involved in hiring faculty been advised of their obligation to respond to requests for reasonable accommodations in the application process? ___ ___

8. Does any individual department or program have a policy or practice of making any medical inquiries of applicants for teaching positions? ___ ___

9. Does any department ask any of the types of questions addressed in questions 63-111 of Chapter 6.2? ___ ___

10. Has training been conducted of all individuals who may be involved in screening applicants for teaching positions, including faculty and student members of search committees, of the do's and don't's of interviewing? ___ ___ [Training is important even if there are no policies on medical inquiries. A search committee member that asks the wrong questions at the wrong time could taint the entire search. This could require the dissolution of the committee and a repeat of the entire process.]

Yes No

11. Has each department involved in faculty hiring developed a process for responding to requests for reasonable accommodations and for considering those requests during the application process? ____ ____

12. If the answer to question 11 is "yes," please address the issues in questions 112-120 in Chapter 6.2. [If the answer is "no," such a process should be developed.]

13. Have all individuals involved in the hiring or selection process been trained or instructed that they cannot reject an applicant based upon the mere need for an accommodation or the request for an accommodation? ____ ____

14. Have all employees involved in making hiring or other selection decisions involving faculty been trained as to when and how reasonable accommodation issues should and must be discussed and limited situations in which a reasonable accommodation can be denied as an undue hardship? ____ ____

    (a) Alternatively, have all such employees involved in the hiring process of faculty been instructed to contact the ADA coordinator when any issue of reasonable accommodation is raised? ____ ____

15. Does the institution or do individual departments conduct reference checks on applicants for faculty positions? ____ ____

    (a) If the answer to question 15 is "yes," address the issues in questions 121-123 of Chapter 6.2 regarding references.

16. Did the audit of work areas and non-work areas for existing employees with disabilities (Chapter 6.3, questions 1-12) encompass all faculty areas? ____ ____

    (a) If the answer to question 16 is "no," an audit should be conducted of those areas.

17. Did the accessibility of work and non-work areas for future employees and the specific accessibility issues for current and future employees with disabilities include faculty as well as other employees? ____ ____

    (a) If the answer to question 17 is "no," an audit should be conducted for existing faculty members with disabilities, and individuals involved in new construction or alteration of areas where faculty offices and lounges will be located should analyze the issues in questions 13-18 and questions 19-40 in Chapter 6.3.

Yes No

18. Are issues regarding the availability of auxiliary aids and services for communication for faculty handled by the personnel department? ___ ___

    (a) If the answer to question 18 is "no," the individual or department responsible for handling such requests on behalf of faculty should analyze the issues in questions 41-48 of Chapter 6.3.

19. Does the institution's reasonable accommodation process apply to all individuals, including faculty? ___ ___

    (a) If the answer to question 19 is "no," is there a process in individual departments or schools? ___ ___

20. For each reasonable accommodation policy or procedure, answer the questions covered in questions 49-57 of Chapter 6.3.

21. Does the institution or do individual departments ensure that seminars and conferences attended by faculty with disabilities are in accessible locations and presented in accessible formats? ___ ___

    (a) If not, is there a procedure for all departments to ensure that outside professional training opportunities are accessible? ___ ___

22. Does the institution or do individual departments provide the same financial support and opportunities for training, including professional meetings and conferences, to all faculty members regardless of disability? ___ ___

23. Does the institution or do individual departments provide necessary accommodations for any employees with disabilities needed for research, conferences, or other professional opportunities? ___ ___

24. Are all tenure decisions or other promotional opportunities for faculty made without regard to disability? ___ ___

25. Are there any criteria used in tenure or advancement decisions that screen out or may tend to screen out individuals with disabilities on the basis of their disability (e.g., ability as a lecturer; interaction with co-workers)? ___ ___

    (a) If so, are these criteria defensible as job-related and consistent with business necessity? ___ ___

26. Have all selection criteria for tenure and advancement that screen out individuals onthe basis of disability been analyzed with the factors in questions 15-29 of Chapter 6.2 and questions 76-103 of Chapter 6.3? ___ ___

Yes No

27. Have all individuals involved in advancement or tenure decisions been advised that they should not consider disability unless it interferes with essential job functions; they cannot consider the need for accommodations unless it would be an undue hardship; and of the ADA's other restrictions? ___ ___

28. Are the same standards for faculty performance and conduct used in decisions regarding discipline or discharge applied to faculty without disabilities that are applied to faculty with disabilities? ___ ___

29. Have individual departments involved in decisions regarding discipline or discharge of faculty considered the issues addressed in questions 124-134 of Chapter 6.3? ___ ___

30. Are there any other issues covered in Chapter 6.3 that are not the responsibility of the human resources/personnel department with respect to faculty? ___ ___

    (a) If so, an audit should be conducted of those areas by each department or school having responsibility for those issues for its own faculty.

CHAPTER 7

AUDITING PROGRAMS AND SERVICES OTHER THAN EMPLOYMENT (TITLES II AND III)

The Title II self-evaluation must cover all programs and services of each public college or university. This is an extremely broad requirement covering, in addition to employment:

- Academic programs
- Non-academic support services
- Clubs and organizations
- Services to the general public
- All off-campus or extension activities

While the prime beneficiaries of the programs, services, and activities of community colleges, four-year colleges, and universities are students, a Title II self-evaluation must also cover services to the general public, including attendees at theater productions, casual visitors to the campus, and even relatives and friends attending graduation. The requirements of Title III might be just as broad, and Section 504 has at least the same scope as Title II. Private institutions are not required by the ADA to conduct a comprehensive evaluation of their programs and services, but it is strongly recommended that they do so.

As discussed in Chapter 4, the focus of the ADA self- evaluation is not simply on the accessibility of facilities, but on the broader concept of whether programs and services are accessible to persons with disabilities. Chapter 7.1 provides a brief overview of program access requirements, expanding on the principles discussed in Chapters 2.1 and 4.1. For further resources on program access, see Chapter 2.4. The remaining chapters, 7.2 through 7.7, provide sample substantive surveys and forms that can be used to conduct Phase I of the self-evaluation.

Note: The questions in Chapters 7.2 through 7.6 are not intended to provide substantive advice. A particular response does not necessarily mean the institution is in violation of the ADA or Section 504. These survey questions are intended solely to help identify potential ADA issues. It is the role of the task force during Phase II to determine if changes are needed to policies, procedures or practices.

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7.1 AN OVERVIEW OF PROGRAM ACCESS REQUIREMENTS

The ADA and the Department of Justice (DOJ) regulations do not require the Department of Education (DOEd) or the Department of Health and Human Services to issue regulations. The primary resources defining the concept of "program accessibility" in higher education are the regulations of the DOEd under Section 504 [34 C.F.R. § 104], cases under Section 504, discussions with officials of the DOEd, and written guidance provided by the DOEd to its field offices for conducting compliance audits under Section 504. Until the DOEd and other agencies issue ADA regulations, the courts will likely look to the Section 504 regulations and decisions to supplement the DOJ guidelines under Title II.

Note: Public colleges may be subject to the jurisdiction of several agencies for various programs besides the DOEd. This overlapping coverage will become more significant as the various agencies delegated by the DOJ with jurisdiction issue regulations. Some of the federal agencies that may affect the activities of colleges and universities include:

> Department of Agriculture--responsible for public extension services
>
> Department of Health and Human Services--responsible for medicine, dentistry, nursing, and other health-related schools; public hospitals, clinics, and other health programs; and preschool or day care
>
> Department of the Interior--responsible for public museums, historic and cultural preservation, parks, and recreation
>
> Department of Housing and Urban Development--responsible for state or public housing. Also enforces the Fair Housing Act Amendments of 1988.

The Title II Regulations

Every public community college, four-year college, and university is required by Title II to make its programs and services accessible to and usable by persons with disabilities. The program access requirements are at least as stringent as those imposed under Section 504. The DOJ Title II regulations largely follow the DOJ regulations under Section 504. The Title II regulations provide that programs and services must be made accessible to persons with disabilities unless this would cause a fundamental alteration to the program or activity or result in an undue financial or administrative burden to the institution. As discussed in Chapter 4.1, program access does not require an institution to make structural alterations unless there is no other feasible alternative. Other methods of achieving program access include redesigning equipment, reassigning services to accessible buildings, assigning aides to beneficiaries, or delivering services at alternative accessible sites.

A separate regulation states that when choosing a method of providing program access, the institution must give priority to the one that results in the most integrated setting appropriate to encourage interaction among all users, including individuals with disabilities. 28 C.F.R. § 35.130(d). The DOJ acknowledges in its Title II Technical Assistance Manual that the requirement of providing services in an integrated setting is in tension with the concept of program access. The DOJ explains that when choosing alternatives to provide program access, segregation must be avoided.

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In addition to the Section 504-based requirements, Title II requires public colleges and universities to ensure effective communication with disabled persons, subject to the "fundamental alteration" and "undue burden" exceptions. Public colleges and universities are required to furnish appropriate auxiliary aids and services necessary to ensure that communications with persons with hearing or speech impairments are "as effective as communications with others." 28 C.F.R. § 35.160. When determining what type of auxiliary aid or service is necessary, the institution must honor a disabled person's choice unless the institution can demonstrate that another effective means of communication exists. Section 504 cases have already established that the institution cannot deny auxiliary aids to disabled students based on their financial ability to pay. Section 504 has been interpreted to require colleges and universities to provide auxiliary aids to students in non-degree, continuing education, and recreation courses.

Title II also specifically requires the provision of Telecommunication Devices for the Deaf (TDDs) or an equally effective telecommunications system whenever a public college or university communicates by telephone. Federal and state relay systems should largely fulfill this requirement. The ADA specifies that all telephone emergency services, including 911 services, must provide direct access to persons who use TDDs or computer modems. Public colleges and universities must also provide adequate information and signage to ensure that all interested persons, including persons with hearing and sight impairments, can obtain information as to the existence and location of accessible programs, services, and facilities. There are specific requirements for signage at inaccessible facilities. See 28 C.F.R. § 35.163.

Program Access in Higher Education

The following are some specific applications of "program access" in higher education institutions identified in the Section 504 regulations and cases. These rules apply to all public colleges under Title II and virtually all private colleges under Section 504 and/or Title III.

Admissions

Qualified persons with disabilities cannot be denied admission or be discriminated against in the admissions and recruitment processes. Each institution is required to make accommodations and adjustments for qualified disabled applicants in any activities conducted by the institution's employees, alumni, or anyone else that are intended to influence potential students to attend the college. This includes interviews, lectures, printed materials sent to students, advertising, and media presentations.

Disabled persons must have an equal opportunity to receive recruitment information. This may require the institution to recruit students at schools or special classes for the disabled. In addition, any information disseminated must be provided, on request, in a form that persons with hearing and vision impairments can understand, without additional charge. If the college charges $15 for a printed catalog, it cannot charge more for a copy on tape or diskette requested by a potential applicant with a visual impairment.

All recruitment and admissions materials should contain a statement to the effect that the institution complies with Section 504 and the ADA. Information about accommodations for students with disabilities should be integrated throughout the materials. All student orientation programs and written orientation materials must be provided, on request, in a format usable by all students. If special orientation programs exist for disabled persons, these students also must be allowed to attend orientation programs for other students and provided with any necessary auxiliary aids and services.

A college or university may not limit the number or proportion of disabled students. The Section 504 regulations expressly forbid the use of any test or criterion that disproportionately adversely affects disabled persons unless the test has been validated as a predictor of success in the program or activity in question. Other rules on testing under the Section 504 regulations parallel those in Title I for employment tests (e.g., the institution must make sure that its admission tests or tests conducted by others on which the institution relies accurately measure what they purport to measure and not an applicant's impaired sensory, manual, or speaking skills). Each testing site need not be accessible, but there must be a sufficient number of accessible testing sites for each examination given. If the institution uses national standardized admissions tests, the institution retains the responsibility of ensuring that the tests are non-discriminatory. If nationally administered tests are not available for certain types of disabled persons, the institution may not exclude such persons from admission for lack of a test score.

Academic Requirements

Requirements that are essential to a program of instruction or to any directly related licensing requirement are not discriminatory under the ADA even if they adversely affect disabled persons. The definition of what are "essential" academic and instructional requirements has been the subject of substantial litigation, with the courts evaluating whether a requested modification is an appropriate accommodation or would cause a fundamental alteration of a program.

Potential modifications in programs could include changing the length of time permitted for the completion of the degree, substituting courses for those required, and changing the manner in which courses are conducted. Institutions cannot prohibit students with hearing disabilities from using tape recorders or prohibit guide dogs in classrooms. Course examinations must measure the student's achievement rather than a student's impaired sensory, manual, or speaking skills. Each institution must take such steps as are necessary to ensure that no student with impaired sensory, manual, or speaking skills is denied the benefits of, or excluded from participation in, programs or activities because of an absence of auxiliary aids.

There are certain programs in which an institution may legitimately refuse to admit an applicant because of the applicant's disability. An institution does not have to admit an applicant to a program when the applicant's disability prevents the applicant from satisfying "necessary" requirements of the program. Nor are institutions required to lower or change their requirements when such a change would result in a "fundamental alteration" or "substantial modification" of the program. The leading case that defines these concepts is *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). In *Davis*, the Supreme Court held that it was permissible for a college to deny admittance to a program training registered nurses where the applicant's hearing impairment would have prevented her from safely performing in either the school's required clinical training program or in her proposed profession because of the potential danger to future patients. The Court found that the school was not required to provide individualized instruction and supervision, or to modify its program to allow the applicant to take only academic courses, or to teach the applicant to perform only some of the duties of a registered nurse. According to the majority opinion, these alternatives would have entailed fundamental alterations of the program, even though the state's licensing requirements or those of other states might not have required a registered nurse to be capable of performing all of the functions open to that profession. It was held to be a legitimate academic policy for a college to train its students to perform all such functions, including emergency room service (See Chapter 2.3 for a discussion of the possible impact of Title I on *Davis*).

Similarly, a school can refuse to graduate a disabled student because his disability prevents him from completing necessary graduation requirements, as long as the school has a legitimate purpose in having those requirements. In *Doherty v. Southern College of Optometry,* 862 F.2d 570 (6th Cir. 1988), a college of optometry failed to graduate a student who suffered from retinitis pigmentosa and a related neurological disorder because he could not pass a manual proficiency requirement on several instruments used by optometrists.

A college or university must base its decision of whether or not an applicant is qualified on known deficiencies of the individual applicant and not upon general knowledge or stereotypes of the applicant's condition. In *Pushkin v. Regents of University of Colorado*, 658 F.2d 1372 (10th Cir. 1981), the court held that a university could not deny a qualified applicant admittance to a psychiatric residency program because he suffered from multiple sclerosis. The applicant was rejected because the examiners were concerned that his condition made him unfit to deal with the reactions that his wheelchair would provoke in patients. The evidence showed that this conclusion was not consistent with the applicant's previous work record and recommendations.

Where the school bases its decision to deny admission not on stereotypes but on judgments about how the student has performed in the past and could be expected to perform in the future, or on objective medical evidence, its decision not to admit the student would not violate Title II. For example, a law school in *Anderson v. University of Wisconsin*, 841 F.2d 737 (7th Cir. 1988), was permitted to deny readmission to an alcoholic student who had been expelled from the school for low grades. The school based this decision on the fact that the evidence showed that the student continued to drink.

These decisions must be contrasted with *Wynne v. Tufts University School of Medicine*, 932 F.2d 19 (1st Cir. 1991) involving a student with dyslexia. That case analyzed the distinction between fundamental alterations and reasonable accommodations. The court suggested that while deference should be accorded academic judgments, reasonable accommodations may involve new approaches. In this case, the school's insistence that written, multiple choice examinations were necessary was not supported by the evidence, and the school had not considered alternatives.

Preadmission Inquiries About Disabilities

Under the Section 504 regulations, an institution may not make preadmission inquiries regarding an applicant's disability unless the institution is engaged in remedial action to correct the effects of past discrimination. This prohibition applies to questions relating to medical condition or health, housing, and financial aid as well as to interviews and letters of recommendation. If the institution makes preadmission inquiries for affirmative action purposes, it must state clearly that supplying the information is voluntary, that it will be kept confidential, that there will be no penalty for not supplying the information, and that the information is solely to be used for purposes of the remedial action program. Medical information may be solicited after admission provided it is kept confidential.

Classroom Accessibility

All existing classrooms of the institution do not have to be accessible. Program access requires that a sufficient number must be accessible so that, through advance scheduling or rescheduling, disabled students are not limited in their selection of courses. In its Section 504 audits, the DOEd frequently focuses on whether there is a plan for rescheduling. Institutions may not exclude any qualified disabled person from any scheduled course offering because of inaccessibility. Courses that are not conducted on the premises, involve field trips, or involve practical training, such as internships or student teaching, must also be accessible, subject to the fundamental alteration and undue burden defenses.

Academic Support

Academic support services must be accessible to disabled students. These include tutoring services, faculty office hours, and the ability to use the institution's computers. An institution is not required to offer special services, such as typing, for students with mobility impairments since this is not an auxiliary service to remove communication barriers, but the institution cannot discriminate if such a service is available to all students.

Housing

An institution that provides housing to students is required to provide comparable, convenient, and accessible housing to disabled students at the same cost as to others. There is no requirement that every dorm room be accessible. Housing must be available in sufficient quantity and variety so that the scope of disabled students' choice of living accommodations is "as a whole" comparable to that of non-disabled students.

Since many schools use a lottery system to determine room selection, it may be necessary at some time prior to the lottery for the school to determine the housing needs of its disabled students. The school must be careful not to violate "the most integrated setting appropriate" requirement of Title II. The system should ensure that students with disabilities have the same opportunity to room with friends that is given to other students. Where the requirements of Title II conflict with state or local zoning laws regarding the housing of disabled persons, the institution should consult legal counsel to determine the appropriate course of action.

The non-discrimination requirement also applies when an institution assists other organizations or persons in their provision of housing to students. Fraternities and sororities that receive funds or are based in college-owned buildings may be included. "Assistance" might be interpreted to extend to such limited action as making bulletin boards available for the posting of off-campus vacancies. It is not necessary for the institution to make sure that every residence posted on every bulletin board is accessible. However, the institution is required to make sure that "as a whole" assisted off-campus housing is non-discriminatory. The institution's ADA grievance procedure should encompass complaints by students about landlords who discriminate.

Cafeterias, Dining Halls, Student Unions

Cafeterias, dining halls, and student unions must be accessible to students with disabilities. In order to meet the non-segregation requirements, schools should try to make each such facility accessible. The concept of program access would not require that all portions of each eating facility be accessible (e.g., mezzanines), provided that there is no undue segregation.

Institutions are probably not required to provide any special food or diets to disabled students that are not available to other students. However, they would be required to provide auxiliary services to eliminate communication barriers, such as having food service workers describe selections listed on a menu board. Institutions with food service operations may wish to review the guidelines in the Title III regulations for private restaurants.

Clubs and Organizations

Under the Section 504 regulations, a college or university that provides "significant assistance" to fraternities, sororities, clubs, or organizations must make sure that the membership practices of those organizations do not discriminate on the basis of an applicant's disability. "Significant assistance" might include organizations or clubs that merely hold meetings on campus, receive financial support through student activities fees, or are "recognized groups."

Interpretations of the DOEd regulations under Section 504 suggest that the institution's obligation to provide auxiliary aids and services includes participation in events by groups sponsored by the college or university. The obligation on clubs and organizations not to discriminate on the basis of disability or to provide appropriate auxiliary aids and services may require modifications in the activities of these organizations, unless they would constitute a fundamental alteration of a particular program or impose an undue burden.

Physical Education and Recreation

Institutions must provide qualified disabled persons an equal opportunity to participate in any physical education courses, intercollegiate clubs, or intramural athletic programs that the institution offers. A school can continue to require medical examinations for athletic teams or sports where necessary to evaluate the risk of injury and to select the most qualified students. Institutions that require physical education courses as a prerequisite to the attainment of a degree may be required to modify such requirements where it cannot be demonstrated that the requirements are essential to the program of instruction being pursued.

Campus Transportation

Transportation services that an institution provides must be equally usable by disabled students and employees. This requirement applies to parking facilities, shuttle services, transportation to programs or activities of the institution like academic field trips or recreational trips, and any other activities for which transportation is provided. Each vehicle used by the institution need not be accessible, so long as equal opportunities for full participation exist. For example, one recent case held that if the institution runs a bus service it cannot limit the operation of wheelchair-accessible buses to fewer hours than those of non-accessible buses. This situation would not be rectified by a policy that allowed disabled students to phone in advance to shift the hours of operation of accessible buses. If an institution has vans that can be used by student groups (e.g., debate teams), it must provide or be able to obtain accessible vans for groups with disabled members.

Health and Insurance

Any health service or insurance programs or policies that an institution offers to its students or employees cannot discriminate based on disability. This includes any hospital, infirmary, nurse, or other service provided to students or employees and any insurance or health plans that are offered to students or employees by the institution. There is no requirement that the institution's health service provides disabled students with any services, treatments, medicines, or medical equipment not already provided to other students. The institution has the responsibility for making sure that outside providers, such as insurance companies selected by the institution, are not discriminating against the institution's disabled students and employees.

Financial and Employment Assistance

An institution is prohibited from providing less assistance, limiting eligibility, or otherwise discriminating on the basis of disability or assisting any entity who discriminatorily provides financial assistance. A college or university may administer scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made according to factors that discriminate on the basis of disability only if the overall effect of the award or such forms of assistance is not discriminatory. It is not discriminatory to deny athletic scholarships to disabled persons who are not qualified to receive such awards. The institution may not assist employers who discriminate against the disabled in hiring. This applies to placement services that assist employers with on-campus recruiting.

Public Facilities

Public colleges and universities commonly sponsor events or operate facilities that are used by the public. The institution bears the responsibility for making sure that persons with disabilities are able to enjoy access to and receive equal benefit from these services and facilities. Some of these facilities may fall under the jurisdiction of agencies other than the DOEd. For example, teaching hospitals and day care centers are overseen by the Department of Health and Human Services.

If the institution sponsors performances in the performing arts, lecture series, or athletic events, it will be required to make these events physically accessible to persons with disabilities. The institution must also provide auxiliary aids to persons with disabilities so that they can understand, appreciate, and benefit from these programs. The same requirements apply to graduation ceremonies and any other public events held by the institution. Facilities that are used by the public such as libraries, museums, and book stores must also be accessible to persons with disabilities.

7.2 SAMPLE AUDIT OF ACADEMIC PROGRAMS AND SERVICES

[NOTE: We recommend that most of the audits of academic and non-academic programs, student services, and public services be initially conducted by the department and program heads who have the best knowledge of the specific areas addressed. It is likely that the institution will need to conduct the audit of its recruitment and admissions policies and practices. To the extent any individual departments engage in their own recruitment and admissions or establish admissions criteria beyond that of the institution, the appropriate department heads should audit those policies and practices. The questions in this audit may need to be modified depending upon the organization of the individual institution.]

Instructions: Answer the following questions applicable to your department, program, or area of responsibility. A General Action Form (Form 7.7.1) should be completed for all issues that may need to be changed or improved. This form should also be used for any response that requires a description of procedures or planned improvements. Potential problems or recommendations can be grouped together if they are within the same general subject area (e.g., recruitment, admissions).

Recruitment Yes No

1. Does the institution recruit applicants for enrollment in its programs? ___ ___

2. If the answer to question 1 is "yes," answer the following questions:

   (a) Does the institution have policies and procedures that relate to recruitment, including, but not limited to, the selection of schools and selection criteria used during recruitment? ___ ___

   (b) Has the recruitment process, including the application of policies and procedures, been evaluated to determine if there is an adverse or disproportionate impact on persons with disabilities? ___ ___

   (c) If so, has the institution taken steps to ensure that the recruitment process, including policies and procedures related to the recruitment process, do not have an adverse or disproportionate impact on disabled applicants? ___ ___

3. Does the institution recruit students at facilities located off campus (e.g., at high schools or regional college fairs)? ___ ___

4. If the answer to question 3 is "yes," has the institution taken steps to ensure that these facilities are accessible to persons with disabilities who desire to participate in the recruitment process? ___ ___

5. Do the institution's recruitment activities include schools and classes attended by disabled students? ___ ___

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Yes No

6. Has the institution taken steps to accommodate applicants with disabilities in the recruitment process (e.g., at college fairs)? ___ ___

7. Does the institution provide auxiliary aids and devices to applicants with disabilities during the recruitment process? ___ ___

8. Has the institution taken steps to communicate to applicants with disabilities the institution's policy on discrimination against disabled students? ___ ___

If so, describe the methods of communication used and attach copies of notices distributed or posted.

____

____

____

9. Has the institution taken steps to communicate the accommodations available to applicants with disabilities who desire to participate in the recruitment process? ___ ___

If so, describe the methods of communication used and attach copies of notices distributed or posted.

____

____

____

10. Has the institution taken steps to train its recruitment personnel and persons acting on behalf of the institution (e.g., alumni) in the program accessibility requirements of Section 504 and the ADA? ___ ___

11. Are the facilities used by the institution in the recruitment process, whether located on or off campus or whether owned by the institution or not, on the whole accessible to disabled persons? ___ ___

12. If your answer to question 11 is "no," answer the following questions:

    (a) Does the institution have alternative facilities available for use by disabled individuals who desire to participate in the recruitment process? ___ ___

    (b) Have steps been taken to ensure that the location of recruitment activities will become accessible to disabled persons? ___ ___

Admissions Process and Criteria

13. Has the institution evaluated its admissions process and procedures to

		Yes	No
	determine whether there is an adverse or disproportionate impact on applicants with disabilities?	___	___
14.	If so, has the institution implemented steps to ensure that there will not be an adverse or disproportionate impact on disabled applicants in the admissions process?	___	___
15.	Does the institution currently apply limitations upon the number or proportion of disabled individuals who may be admitted?	___	___
16.	Has the institution evaluated every criterion used in its admissions process, including interviews, course requirements, essays, and standardized tests, to determine whether the criterion has an adverse or disproportionate impact on applicants with disabilities or could screen out an individual because of his or her disability?	___	___
17.	Has the institution taken steps to ensure that criteria derived from outside sources, such as standardized test scores, do not have an adverse or disproportionate impact on persons with disabilities or that the criteria are defensible?	___	___
18.	For each criterion used in the admission process, has the institution determined if there is an alternative test or criterion that has a less disproportionate, adverse effect on disabled persons that would measure the same skills or levels of achievement?	___	___
19.	Has the institution implemented a process to assure that its admissions tests and criteria accurately reflect the applicant's aptitude, achievement level, or other factors that the test is intended to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure)?	___	___
20.	Does the institution conduct periodic studies of its admissions tests and criterion to monitor the general validity of the test scores?	___	___
21.	Does the institution offer or use admissions tests that may be or are intended to measure sensory, manual, or speaking skills?	___	___
22.	If your answer to question 21 is "yes," please answer the following questions:		
	(a) Are these tests offered as often and in as timely a manner as other admissions tests?	___	___
	(b) Does the institution offer alternative test formats upon		

Yes No

request by applicants with vision and hearing impairments? ___ ___

(c) Does the institution allow disabled applicants additional time to take admissions tests when requested? ___ ___

(d) Does the institution provide other accommodations for admissions testing upon request by disabled applicants? ___ ___

23. Have steps been taken to notify all applicants, including disabled applicants, of the institution's policies and practices regarding nondiscrimination in the admissions process, including accommodations that will be made upon request? ___ ___

If so, describe the methods of communication used and attach copies of notices distributed or posted.

____

____

____

24. Has a procedure been implemented by which disabled students can inquire about and/or request accommodations during the admissions process? ___ ___

If so, describe and/or attach a copy of the procedure(s).

____

____

____

25. Are the facilities used by the institution in the admissions process, whether located on or off campus or whether owned by the institution or not, on the whole accessible to disabled persons? ___ ___

26. If your answer to question 25 is "no," answer the following questions:

(a) Does the institution have alternative facilities available for use by disabled individuals who desire to participate in the admissions process? ___ ___

(b) Have steps been taken to ensure that the location of admissions activities will become accessible to disabled persons? ___ ___

27. Has the institution implemented a process to communicate program accessibility requirements related to admissions to all appropriate faculty and staff? ___ ___

Yes No

28. If the answer to question 27 is "no," answer the following questions:

(a) Describe the steps that will be taken to educate admissions personnel of the program accessibility requirements of Section 504 and the ADA.

____

____

____

(b) Describe the steps that will be taken to ensure that the program accessibility requirements related to admissions will be communicated to all appropriate faculty and staff.

____

____

____

29. If the answer to question 27 is "yes," describe the process and methods of communication used and attach copies of any notices distributed or posted.

____

____

____

Preadmissions Inquiries

30. Does the institution/department make inquiries in its recruitment or admissions process, interviews, written application forms, or in any manner prior to admission as to whether an applicant has a physical or mental impairment or disability, or ask any other medical or health-related question? ___ ___

31. If the answer to question 30 is "yes," answer the following questions:

(a) Is the institution/department making such inquiries solely as part of remedial action taken to correct the effects of past discrimination or to overcome the effects of conditions that resulted in limited participation in the institution's programs or activities? ___ ___

(b) Does the institution/department notify the applicant that the inquiries are intended for use solely in connection with the institution's remedial action obligations or its voluntary action efforts? ___ ___

(c) Does the institution/department clearly qualify such in-

Yes No

quiries by noting that the inquiries are made on a confidential basis and the information will be released only to those individuals with a need to know? ___ ___

(d) Does the institution/department notify all applicants that such inquiries are voluntary? ___ ___

(e) Does the institution/department notify all applicants that the refusal to answer the inquiries prior to admission will not subject the applicant to any adverse treatment? ___ ___

32. Has the institution taken steps to ensure that inquiries relating to whether an applicant is disabled are not part of the admissions process unless the restrictions in question 31 have been addressed? ___ ___

[NOTE: Section 504 of the Rehabilitation Act and the ADA are not "affirmative action" statutes and require no goals or quotas. Section 504 and the ADA are limited to non-discrimination and some accommodations (e.g., the provision of auxiliary aids and services). Voluntary affirmative action plans are permissible, subject to certain restrictions.]

Post-Admission Medical Inquiries

33. Does the institution or any department make any medical inquiries of any student? ___ ___

Specific Examples: Does the institution/department require as a condition of eligibility for any academic program (e.g., as a condition of registration to nursing and medical programs or student teaching):

(a) Preregistration medical forms ___ ___

(b) Certificate of vaccinations ___ ___

(c) Medical history ___ ___

(d) Physician's statement ___ ___

(e) Medical records ___ ___

If the answer to question 33 is "no," skip to the next section.

34. If the answer to question 33 is "yes," then for each requirement, answer the following questions:

Yes No

(a) Is there a legitimate, non-discriminatory reason for making the inquiry? ___ ___

(b) Is the information sought limited to that necessary for the program? ___ ___

(c) Is the information used consistently with the ADA (e.g., only to determine legitimate qualifications or screen out individuals who are a "direct threat" to health or safety)? ___ ___

(d) Have all medical qualification standards been analyzed and found to be defensible under the ADA? ___ ___

(e) Is the information kept confidential, preferably in separate medical files? ___ ___

35. Have all department/program heads and/or physicians who analyze medical information relevant to participation in programs (both academic and non-academic) been trained in the ADA's restrictions on the use of medical information and the direct threat standard? ___ ___

Academic Requirements, Rules, and Regulations

36. Has each department, college, school, or program reviewed its academic requirements, including, but not limited to, all degree or course requirements or prerequisites, to determine whether they have or may have an adverse or disproportionate impact on students with disabilities or may tend to screen out an individual because of his or her disability? ___ ___

37. For every academic requirement identified in question 36 that has or may have an adverse or disproportionate impact on students with disabilities, answer the following questions:

(a) Is the requirement essential to the course of study being pursued or directly related to a licensing requirement that is defensible under the ADA? ___ ___

(b) If the answer to question 37(a) is "yes," can the requirement be modified to accommodate a disabled individual without imposing an undue burden on or be a fundamental alteration of the program? ___ ___

38. Has each department evaluated all policies and procedures related to its

Yes No

academic programs, including, but not limited to, curriculum guidelines and course descriptions? — —

39. Do any of the policies and practices identified in question 38 directly exclude students with disabilities or have an adverse or disproportionate impact on students with disabilities? — —

40. If the answer to question 39 is "yes," has the department taken steps to remedy the adverse effect these policies and practices have on disabled students? — —

If so, describe these steps and attach the relevant documentation, including the policies and procedures referenced in question 38.

____

____

____

41. Has each department evaluated all of its rules and regulations related to its academic programs to determine their possible effect on disabled students? — —

42. Do any of the rules and regulations have an adverse or disproportionate impact on students with disabilities or limit the participation of disabled students in the department's programs? — —

Specific Examples. Are there:

(a) Prohibitions against service animals or guide dogs for the vision-impaired in campus facilities — —

(b) Prohibitions against tape recorders for the hearing-impaired in classrooms — —

(c) Restrictions on or requirements for the use of personal attendants — —

(d) Segregated seating for students with disabilities — —

(e) Required testing methods (e.g., written examinations) — —

(f) Required skills demonstrations — —

(g) Mandated course substitutions, for example, students with hearing impairments must take sign language courses as opposed to foreign language courses or cannot take physical education — —

Yes No

43. Has each department taken any steps to ensure that the rules and regulations in question 42 are modified so as not to impose limitations upon students with disabilities that cannot be defended? ___ ___

44. Has each department analyzed state laws or regulations relating to course substitution or alternatives? ___ ___

45. Does the institution or department have a process for analyzing requests for substitutions or changes in:

    (a) Curriculum or courses ___ ___

    (b) Teaching methods ___ ___

    (c) Academic criteria for individual courses ___ ___

    (d) Methods of demonstrating proficiency ___ ___

Academic Testing

46. Does the institution/department's academic criteria or program requirements include any means of scored testing? ___ ___

47. Do these course examinations or any other procedures for evaluating students' academic achievement have an adverse impact on disabled students or screen out individuals because of their disabilities? ___ ___

48. Has the institution/department implemented any steps to eliminate any adverse impact of existing testing methods on disabled students? ___ ___

    If so, describe these steps and attach any applicable policies.

    ____

    ____

    ____

49. Does the institution/department offer academic tests that may measure impaired sensory, manual, or speaking skills or are intended for students with disabilities? ___ ___

50. If the answer to question 49 is "yes," please answer the following questions:

    (a) Are these tests offered as often and in as timely a manner as other academic tests? ___ ___

    (b) Does the department offer alternative test formats upon

		Yes	No
	request by students with vision and hearing impairments?	___	___
(c)	Does the department allow disabled students additional time to take academic tests when requested and where appropriate?	___	___
(d)	Does the department provide other accommodations for course examinations upon request to students with disabilities?	___	___
51.	Does the institution/department have a process by which disabled students can request accommodations in testing situations?	___	___
52.	If so, is there any type of disability that cannot be accommodated?	___	___
53.	Has the institution/department notified all students, including those with impaired sensory, manual, or speaking skills, of the accommodations that will be made available in testing situations, including access to classrooms or alternative testing?	___	___
54.	Does the institution/department require disabled students to notify appropriate personnel by a specified time to request accommodations in testing situations?	___	___
55.	Does the institution/department have a process that is available to students with disabilities to reschedule a test if the student does not know that an accommodation will be needed prior to the test?	___	___

If so, describe the process used and attach copies of any relevant documentation.

____

____

____

		Yes	No
56.	Has the institution/department implemented a process to educate appropriate faculty and staff about the program accessibility requirements of Section 504 and the ADA?	___	___

If so, describe the process used and attach copies of any relevant documentation.

____

____

____

57. Has each department taken steps to notify all students of the department's

Yes No

policies and practices relating to non-discrimination in its academic programs? ___ ___

If so, describe the methods of communication used and attach copies of any notices distributed or posted.

____

____

____

58. Does the institution/department rely on testing developed and/or administered by sources outside the department and/or independent of the institution? ___ ___

59. Has the institution evaluated these tests to ensure that accommodations are made for students with disabilities in accordance with the Rehabilitation Act and the ADA? ___ ___

60. Has the institution confirmed that each outside testing source employs a process to ensure that its tests do not have an adverse or disproportionate impact on students with disabilities? ___ ___

Provision of Auxiliary Aids and Services

61. Does the institution and/or department offer appropriate "auxiliary aids or services" to any disabled student with visual, hearing or speech impairments, upon request, at no additional charge? ["Auxiliary aids or services" may include typed texts, note takers, lecture notes, film transcriptions, interpreters, or other effective methods of making orally delivered materials available to students with hearing impairments; readers or taped texts for students with visual impairments; and classroom equipment adapted for use by students with manual impairments.] ___ ___

62. Does the institution and/or department deny benefits or exclude disabled students from participation in any programs, activities, or services because of the absence of auxiliary aids? ___ ___

63. Has the institution and/or department implemented a procedure whereby students with visual, hearing, or speech impairments can request auxiliary aids or services? ___ ___

If so, describe the procedure(s) and attach copies of any relevant documentation.

____

____

____

Yes No

64. Does the institution and/or department notify all students, including those with impaired vision, hearing, or speech, that auxiliary aids and services will be made available? ___ ___

If so, describe the methods of communication used and attach copies of any notices distributed or posted.

Physical Accessibility of On-Campus Programs
(See also Chapter 4.1 and audits in Chapter 8.4)

65. Has the department evaluated its programs, classes, services, and activities to determine whether they are accessible to students with disabilities, including, but not limited to, access to mobility- and hearing-impaired students? ___ ___

66. Has the institution and/or department implemented a procedure for relocating programs, classes, services, or activities to accessible facilities where needed to provide program access? ___ ___

If so, describe the procedure(s) and attach any relevant documentation.

67. Has the institution and/or department taken steps to notify students that accommodations will be made if they wish to participate in programs, classes, services, or activities that are held in inaccessible facilities? ___ ___

If so, describe the methods of communication and attach copies of any notices distributed or posted.

68. Has the department evaluated all programs, classes, services, and activities to determine whether there are essential program components or equipment, for example science laboratories or business machines, that cannot be relocated? ___ ___

69. For each program, class, service, or activity found to be currently inaccessible because of structural barriers, can accessibility be achieved through relocation or other operational solutions? ___ ___

Yes No

70. If the answers to questions 68 and 69 reveal any program or service that cannot be made accessible except through structural renovations, prepare an analysis for each such facility or program, using Form 7.7.1, describing:

    (a) The facility or portion of the facility that is currently inaccessible

    (b) The barriers to relocation (including cost and difficulty)

    (c) The nature of the program

    (d) Any alternative programs that are accessible

Off-Campus Academic Programs and Services
(See Chapter 7.5)

Research Opportunities

71. Does the institution or any department offer research opportunities and/or assistance to its students? ___ ___

72. Has the institution/department reviewed its policies and procedures relating to research opportunities to ensure that they do not have an adverse or disproportionate impact on students with disabilities? ___ ___

    Specific examples. Are there:

    (a) Restrictions on acceptance to research programs ___ ___

    (b) Restrictions on participation in research programs ___ ___

    (c) Restrictions on procedures to be followed in research programs ___ ___

73. Has the institution/department evaluated the facilities where research opportunities will be provided to determine if they are accessible to students with disabilities? ___ ___

74. Does the institution/department provide auxiliary aids and other accommodations to students who desire to participate in research programs? ___ ___

75. Has the institution/department communicated its research opportunities to students in a manner accessible to students with hearing and visual impairments? ___ ___

Yes No

If so, describe the methods of communications and attach any relevant documentation.

____
____
____

76. Has the institution/department notified students in a manner accessible to students with hearing and visual impairments of the process for requesting accommodations in research opportunities? ___ ___

If so, describe the methods of communications and attach any relevant documentation.

____
____
____

77. Do any organizations or entities independent of the institution/departments provide research grants or assistance of any kind to students? ___ ___

78. If the answer to question 77 is "yes," repeat questions 72 through 76 for each research opportunity/program provided or sponsored by an organization independent of the institution.

79. Has the institution taken steps to ensure that each independent organization has complied with its non-discrimination and accessibility requirements under the ADA? ___ ___

Academic Programs in Non-Traditional Formats

80. Does the institution or any department provide academic programs in non-traditional formats, such as:

(a) Televised classrooms over local television or cable channels ___ ___

(b) Satellite broadcasts of seminars or courses ___ ___

(c) Correspondence courses using written materials, audio tapes, or other media ___ ___

(d) Other ___ ___

If any answer to questions 80(a)-(d) is "yes," complete the following questions; if "no," skip to the next section.

81. Are all materials and lectures used in non-traditional courses available in

Yes No

alternative formats for persons with disabilities? ___ ___

Specific Examples:

(a) Are televised or broadcast courses or lectures made accessible through open or closed captioning or the provision of transcripts to persons with hearing impairments? ___ ___

(b) Are any graphic materials, slides, displayed text, or visual materials provided in some alternative format to persons with vision impairments? ___ ___

(c) Are appropriate accommodations provided in testing for such programs for students with impaired manual, sensory, or speaking skills? ___ ___

82. Are any written materials, such as a course syllabus, provided in alternative formats, such as tape, braille, large print, or diskette, for use by persons with vision impairments? ___ ___

83. Has the institution/department notified students in a manner accessible to students with hearing and visual impairments of the process for requesting accommodations in non-traditional courses? ___ ___

If so, describe the methods of communication and attach any relevant documentation.

____

____

____

Special Access Needs

84. Are there any scientific, language, or other laboratories that use specialized equipment? ___ ___

85. Are there other classrooms or facilities that contain specialized equipment for courses or research? ___ ___

86. If the answer to questions 84 or 85 is "yes," answer the following; if "no," skip to the next section.

(a) Is the equipment accessible or adaptable for use by students with different disabilities (e.g., height and reach ranges for students with mobility impairments; appropriate signage for students with visual impairments)? ___ ___

Yes No

(b) If not, is there specialized or adaptive equipment available that can be used in conjunction with or in place of existing equipment? ___ ___

(c) If the equipment cannot be made accessible, are there alternatives such as personnel to assist in the use of equipment? ___ ___

Academic Support Services

87. Does the institution provide academic support services to students? ___ ___

Specific Examples:

(a) Tutoring ___ ___

(b) Remedial English ___ ___

(c) Access to computers and computer labs ___ ___

(d) Access to typewriters ___ ___

(e) Typing services ___ ___

88. Are there any policies, procedures, and practices that limit access to these services by students with disabilities? ___ ___

If so, have these policies, procedures, and practices been determined to be defensible under the ADA? ___ ___

89. If equipment is provided or made available to students (e.g., computers or typewriters), is accessible equipment also provided to students with disabilities, such as braille keyboards? ___ ___

90. Are auxiliary aids and services provided where necessary to receive services, such as tutoring services? ___ ___

Disabled Student Services

91. Is there an individual or office assigned to coordinate requests for assistance by students with disabilities? ___ ___

92. Are special services provided by the institution or any department to students with disabilities that are not provided to students without disabilities (e.g., tutoring)? ___ ___

Yes No

93. Does the acceptance of or participation in any special services for students with disabilities preclude a student with a disability from participating in other programs or services offered by the institution or department? ___ ___

94. Have the resources and expertise of the disabled student coordinator office been made known to the members of the ADA task force to avoid unnecessary duplication? ___ ___

Potential Problems and Recommended Solutions

95. During the course of the foregoing self-evaluations, did the institution/department identify any potential problems or areas of possible non-compliance? ___ ___

If so, please complete Form 7.7.1 for each potential problem.

7.3 SAMPLE AUDIT OF STUDENT SERVICES

Instructions: Answer the following questions applicable to your department, program or area of responsibility. A General Action Form (Chapter 7.7.1) should be completed for all issues that may need to be changed or improved. This form should also be used for any response that requires a description of procedures or planned improvements. Potential problems or recommendations can be grouped together if they are within the same general subject area.

General Yes No

[NOTE: The questions in this section are applicable to most student services and therefore should be included in the evaluation of each of the specific areas identified in this audit.]

1. Are there general policies or procedures that govern participation in or receipt of services offered to students, including, but not limited to, housing, food services, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, and extracurricular activities or services? ___ ___

2. Has the institution and/or each affected department reviewed these policies and procedures to determine whether they limit the participation of students on the basis of a disability? ___ ___

3. If the answer to question 2 is "yes," are there any policies or procedures relating to student services that discriminate or have the effect of discriminating against persons with disabilities or would tend to exclude persons with disabilities because of their disability? ___ ___

Specific Examples:

Are there policies, procedures, or criteria that would tend to:

(a) Deny access or limit participation in student services based on physical or mental condition or disability ___ ___

(b) Segregate students with disabilities or physical or mental conditions in student services ___ ___

(c) Impose requirements on students with disabilities that are not imposed on non-disabled students ___ ___

(d) Require identification of physical or mental conditions or disabilities ___ ___

(e) Provide separate or different services for students with disabilities instead or in place of accommodations to

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Yes No

enable participation in other programs or services ___ ___

4. If the answer to any part of question 3 is "yes," does the institution and/or department have a defense to its discriminatory conduct (e.g., would an accommodation for the student or modification of the service be considered a fundamental alteration of the service provided to students)? ___ ___

5. Has the institution and/or department implemented a procedure to periodically evaluate whether its student services, as a whole, provide equal opportunities for the participation of persons with disabilities? ___ ___

If so, describe the procedures and attach any relevant documentation.

___

___

___

6. Are there policies and procedures that specifically relate to disabled students' participation in student services? ___ ___

7. If the answer to question 6 is "yes," do these policies clearly state that:

   (a) Participation in segregated or "special" programs is strictly voluntary ___ ___

   (b) Participation in segregated or "special" programs for disabled students does not prevent or limit participation in other programs ___ ___

8. Has the institution taken steps to communicate its policies and procedures regarding student services, including, but not limited to, those addressing disabled students, to all students, including the disabled student body? ___ ___

9. If so:

   (a) Is this information available on request in alternative formats (e.g., braille, disk, tape, large print, captioned) for students with disabilities? ___ ___

   (b) Are steps taken to make students aware of the availability of alternative formats? ___ ___

   (c) Describe the methods of communication used and attach copies of any notices distributed or posted.

		Yes	No
	___		
	___		
	___		
10.	Has the institution audited each facility on campus that is associated with the provision of any of its student services or programs? (See Chapter 8.5)	___	___
11.	Are each of these facilities accessible to students with disabilities?	___	___
12.	If the answer to question 11 is "no," does the institution have a plan to relocate these services to accessible facilities or modify the facilities to accommodate disabled individuals?	___	___
13.	Has the institution taken steps to train its personnel and faculty involved in providing student services about the non- discrimination, accessibility, auxiliary aid, and other requirements of the ADA?	___	___
Housing			
14.	Does the institution provide housing to its students?	___	___
	If the answer is "no," skip to the next section.		
15.	If the answer to question 14 is "yes." what types of housing are provided, for example:		
	(a) Freshman	___	___
	(b) Undergraduate	___	___
	(c) Apartment-type	___	___
	(d) Family or married student housing	___	___
	(e) Graduate	___	___
	(f) Designated for activities, for example, sports dorm	___	___
	(g) Other	___	___
16.	For each type of housing offered (not each facility), answer the following questions:		
	(a) Are one or more rooms set aside for wheelchair access?	___	___

		Yes	No
(b)	Are one or more rooms set aside for students with hearing impairments?	___	___
(c)	Are one or more rooms set aside for students with vision impairments?	___	___
(d)	Are the numbers of rooms available for students with mobility, hearing, and vision impairments sufficient to meet the demand for housing by current students with disabilities?	___	___
(e)	Do the "accessible" rooms meet the requirements of the ADA and Fair Housing Act (HUD) regulations?	___	___
(f)	Are there other rooms that are "adaptable" for use by persons with disabilities?	___	___
17.	If the answer to any part of question 16 is "no," has the institution taken steps to ensure that accessible rooms are made available to disabled students within that type of housing?	___	___
18.	Does the institution have a procedure for disabled students to request accommodations in accessible campus housing?	___	___

(a) If so, describe the procedure and attach any relevant documentation.

____

____

____

		Yes	No
(b)	If each facility is not accessible, does the procedure include a means for students with disabilities to have the same opportunity to share housing with friends that is provided to other students?	___	___
19.	Has the institution taken steps to notify all students, including disabled students, that accessible campus housing exists and that procedures have been implemented to request accessible housing?	___	___

If so, describe the methods of communication used and attach copies of any notices distributed or posted.

____

____

____

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Yes No

20. Is the housing accessible to disabled students segregated from the housing provided to non-disabled students? ___ ___

21. If the answer to question 20 is "yes," is the institution taking steps to integrate disabled students into accessible housing with non-disabled students or to increase the selection of accessible housing? ___ ___

If so, describe those plans.

____

____

____

22. Has an audit been conducted of policies, requirements, and practices related to campus housing, including, but not limited to, policies related to the selection of students for housing and restrictions on participation in housing? ___ ___

23. If the answer to question 22 is "yes," do any of these policies, requirements, or practices discriminate against or limit the use by disabled students? ___ ___

For example, are there any:

(a) Prohibitions against service animals or guide dogs in student housing ___ ___

(b) Segregated rooms for disabled students ___ ___

(c) Limitations on where students with disabilities can live or travel (e.g., first floor only) ___ ___

24. Does the institution contract with, or assist in any way, any organization or entity to provide campus housing (other than lists of housing)? ___ ___

25. If the answer to question 24 is "yes," has the institution taken steps to ensure that the housing provided by these "outside" organizations is:

(a) Accessible to disabled students ___ ___

(b) Comparable in selection and variety to the housing provided to non-disabled students ___ ___

(c) Comparable in cost to housing provided to non-disabled students ___ ___

Yes No

(d) Not refused to students because of their disabilities ___ ___

26. Does the institution provide student housing located off-campus? ___ ___

27. If the answer to question 26 is "yes," repeat questions 15-23 for all off-campus housing.

28. Does the institution notify all students, including disabled students, of the availability of off-campus housing, for example through publications listing off-campus housing? ___ ___

29. If the answer to question 28 is "yes," answer the following questions:

(a) Have steps been taken to ensure that all persons or organizations listing off-campus housing do not discriminate or limit the use of facilities by persons with disabilities? ___ ___

(b) Is housing that is accessible to disabled students designated accordingly? ___ ___

(c) Have landlords been informed that they must comply with all relevant laws to be able to advertise off-campus housing? ___ ___

(d) Are all students informed that the institution has not investigated these facilities and makes no representation regarding condition, cleanliness, or accessibility? ___ ___

Transportation

30. Does the institution provide transportation to, from, and/or around campus to its students or for student activities? If the answer is "no," skip to the next section. ___ ___

31. If the answer to question 30 is "yes," what kinds of transportation does the institution provide? ___ ___

For example:

(a) Parking shuttles ___ ___

(b) Vans/buses around campus or between facilities and housing ___ ___

(c) Van service during evenings ___ ___

		Yes	No
	(d) Vans/buses/cars for student groups traveling to off-campus activities	___	___
32.	Are any of these "fixed-route" systems?	___	___
33.	If the answer to question 32 is "yes," answer the following questions:		
	(a) Does the system utilize accessible buses or paratransit?	___	___
	(b) Does the system offer the same accessibility as other modes of transportation, for example hours and schedules?	___	___
34.	Has the institution reviewed all relevant regulations regarding the operation and purchase of its selected modes of transportation? (See regulations in Chapter 2.4)	___	___
35.	Has the school purchased, or is it planning to purchase, new buses or other modes of transportation after July 1990?	___	___
36.	If the answer to question 35 is "yes," are these buses or other modes of transportation accessible to:		
	(a) Students with mobility impairments or who use wheelchairs	___	___
	(b) Students with hearing impairments	___	___
	(c) Students with vision impairments	___	___
37.	If existing buses or other modes of transportation are not accessible, has the institution:		
	(a) Complied with the applicable regulations	___	___
	(b) Identified and implemented alternative means to make transportation accessible	___	___
38.	Has the institution reviewed all of its policies relating to its transportation systems to determine if they discriminate against or limit use of the system by persons with disabilities?	___	___
	Specific Examples:		
	(a) Are there prohibitions against service animals or guide dogs on transportation systems?	___	___

		Yes	No
	(b) Are there segregated seating or buses specifically designated for persons with disabilities?	___	___
	(c) Are paratransit systems for persons with disabilities available the same hours as other transportation systems?	___	___
	(d) Do limits on who can use various forms of transportation result in segregation?	___	___
39.	Are all aspects of the transportation system accessible to students with disabilities, including, but not limited to, parking spaces and walkways to the buildings?	___	___
40.	Does the institution provide auxiliary aids and other accommodations, such as proper signage or visual alarms for hearing-impaired students who use the transportation system?	___	___
41.	Has the institution implemented procedures whereby disabled students can request assistance and/or auxiliary aids for use on the transportation system?	___	___

42. If so, describe those procedures and attach any relevant documentation.

____

____

____

		Yes	No
43.	Has the institution communicated to all students its policies and practices regarding the transportation system, including, but not limited to, accommodations that will be made for disabled students?	___	___

44. If so, describe the method of communication used and attach copies of any notices distributed or posted.

____

____

____

		Yes	No
45.	Does the institution provide transportation to and from off-campus activities, such as football games, debate tournaments, or scholastic competitions?	___	___

46. If the answer to question 45 is "yes," repeat questions 33-44 for those transportation services.

		Yes	No
47.	Does the institution contract with transportation companies independent of the institution to provide transportation to its students?	___	___

			Yes	No
48.	If the answer to question 47 is "yes," answer the following questions:			
	(a)	Has the institution confirmed that the "outside" system has complied with the non-discrimination and accommodation requirements of the Rehabilitation Act, the ADA, and other applicable laws?	___	___
	(b)	Has the institution determined that procedures exist whereby students with disabilities can request accommodations or auxiliary aids for use on the "outside" transportation system?	___	___
	(c)	Is the outside transportation system, as a whole, accessible to persons with disabilities?	___	___

Financial Assistance

49.	Does the institution directly or indirectly provide financial assistance to its students or provide help in obtaining financial assistance? If the answer is "no," skip to the next section.		___	___
50.	What kinds of financial assistance does the institution provide:			
	(a)	General academic assistance to cover all or part of tuition, books, or supplies	___	___
	(b)	Designated, for example, athletic scholarships	___	___
	(c)	Achievement awards/scholarships	___	___
	(d)	Specific endowments or trusts	___	___
	(e)	Other	___	___

51. For each kind of financial assistance offered, note whether the assistance is provided by the institution or by the individual departments.

____

[NOTE: If financial assistance is provided by the individual department or college as opposed to the institution itself, this portion of the audit should be conducted by the appropriate department head for each kind of financial assistance offered. The institution should review each department's program of assistance during Phase II to ensure that the department is acting in compliance with the ADA.]

			Yes	No
52.	Has the institution/department evaluated each kind of financial assistance provided to determine if the assistance discriminates or has the effect of discriminating against disabled students in any of the following manners:			
	(a)	Selection of recipients	___	___
	(b)	Application process	___	___
	(c)	Acceptance restrictions	___	___
	(d)	Availability of assistance	___	___
	(e)	Accessibility of locations involved in financial assistance	___	___
	(f)	Availability of assistive devices necessary for disabled students to apply for financial aid	___	___
53.	Does the institution have a procedure for evaluating each department that offers financial assistance (separate from the assistance offered by the institution) to ensure that the assistance offered, as a whole, does not discriminate against disabled students?		___	___
54.	Has the institution/department reviewed its policies and practices related to its acceptance restrictions on available assistance to determine if there is an adverse or disproportionate impact on persons with disabilities or may tend to screen out individuals because of a physical or mental impairment?		___	___
	(a)	If the answer to question 54 is "yes," has the institution/department taken steps to eliminate discriminatory restrictions on financial assistance?	___	___
55.	Has the institution/department reviewed its policies and practices related to financial assistance to determine whether there is limited availability of financial assistance to disabled students either:			
	(a)	Directly related to a person's disability; or	___	___
	(b)	Indirectly related to a person's disability because the student is able to obtain financial assistance from an outside source, for example, social security?	___	___
56.	Does the formula for determining need for financial aid take into consideration the special circumstances of students with disabilities?		___	___

		Yes	No
	Specific Examples:		
(a)	Added costs of special equipment or services not provided by the institution (e.g., attendants, wheelchairs, medical services)?	___	___
(b)	Additional time needed for students unable to maintain a full-time courseload because of their disabilities?	___	___
57.	Does the institution/department have any means to ensure that the manner or process in which the financial assistance is administered does not discriminate against disabled students?	___	___
58.	Has the institution/department communicated to all students, including those with hearing and vision impairments, the institution's policies and practices relating to:		
(a)	The availability of financial assistance	___	___
(b)	The process(es) to obtain financial assistance	___	___
(c)	The procedures to request personal assistance or auxiliary aids to apply for financial assistance	___	___
	If so:		
(a)	Is this information available or distributed in alternative formats?	___	___
(b)	Describe the methods of communication used and attach copies of any notices distributed or posted.		
59.	Has the institution/department communicated to all students, including those with hearing and vision impairments, the institution's policies of non-discrimination and accommodations regarding the provision of financial assistance?	___	___

If so, describe the method of communication used and attach copies of any notices distributed or posted.

Yes No

60. Does the institution contract with any "outside" organizations to provide financial assistance to its students? ___ ___

61. What steps has the institution taken to ensure that the administration and provision of financial assistance by any "outside" organization does not have an adverse impact or discriminatory effect on disabled students? ___ ___

Student Insurance

62. Does the institution and/or student government offer or sponsor any insurance to its students, including life and health insurance, either directly or through an insurance company or plan selected by the institution? If the answer is "no," skip to the next section. ___ ___

63. If the answer to question 62 is "yes," does the institution provide information about the forms of insurance it offers to students in formats accessible to disabled students? ___ ___

If so, describe the information provided and attach any relevant documentation.

____

____

____

64. Has the institution evaluated each kind of insurance program it offers to determine if the program discriminates or has an adverse or disproportionate impact on disabled students in any of the following manners:

(a) Application process ___ ___

(b) Exclusions from coverages (e.g., persons who test positive for HIV) ___ ___

(c) Limitations on coverages ___ ___

(d) Accessibility of locations, if any, involved in the insurance programs ___ ___

(e) Availability of assistive devices necessary for disabled students to apply for student insurance or process claims ___ ___

65. Has the institution reviewed the policies and practices related to its insurance programs, including exclusions for persons with certain disabling conditions or record of a disability, to determine if there is an adverse or disproportionate impact on persons with disabilities? ___ ___

	Yes	No
66. Did the answer to question 65 identify any potentially discriminatory criteria?	___	___
(a) If so, has the institution taken steps to modify its policies and practices so as not to limit the availability of insurance to students with disabilities?	___	___
67. Has the institution reviewed its policies and practices related to its insurance programs to determine whether there is limited availability of student insurance to disabled students either:		
(a) Directly related to a person's disability; or	___	___
(b) Indirectly related to a person's disability because the student is able to obtain insurance from an outside source?	___	___
68. Has the institution reviewed its policies and practices or those of its insurer to verify that all exclusions and practices are based upon or not inconsistent with state law, are based upon legitimate risk assessments or sound actuarial principles, and are defensible under the ADA?	___	___
69. Does the institution have a procedure to ensure that the manner or process in which student insurance is administered does not discriminate against disabled students?	___	___

If so, describe the procedure and attach any relevant documentation.

____

____

____

	Yes	No
70. Has the institution communicated to all students, including those with hearing and vision impairments, the institution's policies and practices relating to:		
(a) The availability of student insurance	___	___
(b) The process(es) to obtain student insurance	___	___
(c) The procedures to request personal assistance or auxiliary aids to apply for student insurance	___	___

If so, describe the method of communication used, including the availability of alternative formats, and attach copies of any notices distributed or posted.

Yes No

____

____

____

Health Services

71. Does the institution provide any form of health care service to its students, including:

    (a) Comprehensive student health clinics ___ ___

    (b) Emergency and first aid clinics ___ ___

    (c) Physical therapy units ___ ___

    (d) Anti-smoking clinics ___ ___

    (e) Other ___ ___

    If the answer is "no," skip to the next section.

72. If any answer to question 71 is "yes," has the institution evaluated each kind of health care service it offers to determine if the service discriminates against or excludes disabled students in any of the following manners:

    (a) Availability of health care service ___ ___

    (b) Restrictions on treatment of persons with certain conditions (e.g., those who are HIV positive) ___ ___

    (c) Accessibility of locations used for health care services ___ ___

    (d) Availability of assistive devices necessary for disabled students to take advantage of the services provided ___ ___

73. If the analysis in question 72 revealed any discriminatory criteria,

    (a) Has the institution determined that eliminating the discrimination would be an undue burden or require a fundamental alteration (e.g., because the clinic is not able to treat students with certain medical conditions)? ___ ___

    (b) Has the institution taken steps to modify its policies and practices so as not to limit the availability of health care services to students with disabilities? ___ ___

Yes No

74. Has the institution reviewed its policies and practices to determine whether the institution will deny health care to a disabled student because of the costs involved? ___ ___

75. Does the institution have a procedure to ensure that the manner or process in which health care services are administered does not discriminate against disabled students? ___ ___

If so, describe the procedure and attach any relevant documentation.

____

____

____

76. Has the institution communicated to all students, including those with hearing and vision impairments, the institution's policies and practices relating to:

(a) The availability of health care services ___ ___

(b) The process(es) to obtain health care ___ ___

(c) The procedures to receive personal assistance or auxiliary aids to obtain health care ___ ___

If so, describe the method of communication used, including any alternative formats, and attach copies of any notices distributed or posted.

____

____

____

77. Has the institution communicated to all students, including those with hearing and vision impairments, the institution's policies of non-discrimination and accommodations regarding the provision of health care? ___ ___

If so, describe the method of communication used and attach copies of any notices distributed or posted.

____

____

____

78. Does the institution contract with any "outside" organizations to provide health care services to its students? ___ ___

79. Has the institution taken steps to ensure that the administration and provision of health care by any "outside" organization does not have an

Yes No

adverse impact or discriminatory effect on disabled students? ___ ___

If so, describe these steps and attach any relevant documentation.

____

____

____

Medical Inquiries

80. Does the institution make any medical inquiries of any student? ___ ___

Specific Examples:

Does the institution/any department require, as a condition of eligibility for or participation in any activity or service (including athletics and health services):

(a) Preregistration medical forms ___ ___

(b) Certificate of vaccinations ___ ___

(c) Medical history ___ ___

(d) Physician's statement ___ ___

(e) Medical records ___ ___

If the answer is "no," skip to the next section.

81. If the answer to question 80 is "yes," then for each requirement, answer the following questions:

(a) Is there a legitimate, non-discriminatory reason for making the inquiry? ___ ___

(b) Is the information sought limited to that necessary for the program? ___ ___

(c) Is the information used consistently with the ADA (e.g., only to determine legitimate qualifications, provide services, or screen out individuals who are a "direct threat" to health or safety)? ___ ___

(d) Is the information kept confidential, preferably in separate medical files? ___ ___

		Yes	No
82.	Have all department/program heads and/or physicians who analyze medical information relevant to participation in programs or receipt of services been trained in the ADA's restrictions on the use of medical information and the direct threat standard?	___	___

Physical Education and Recreation

		Yes	No
83.	Does the institution provide physical education courses or intramural athletic activities to its students? If the answer is "no," skip to the next section.	___	___
84.	If the answer to question 83 is "yes," has the institution reviewed its policies and rules regarding physical education and athletic activities to determine if they restrict access to any course or activity based on a student's physical condition and screen out or tend to screen out disabled students?	___	___
85.	If any of the policies or rules identified in question 84 screen out or tend to screen out disabled students, are these policies, rules, or criteria necessary to avoid significant injury to disabled students or others? If so:	___	___
	(a) Is this determination based upon objective medical evidence?	___	___
	(b) Does this determination meet the "direct threat" standard?	___	___
	(c) Does this determination consider reasonable accommodations to reduce the risk of injury?	___	___
86.	Prior to the application of these policies and rules to particular individuals, has objective evidence been examined to determine whether there is a significant likelihood that a particular disability will likely result in significant injury?	___	___
	(a) Does this evidence involve objective criteria, as opposed to subjective evaluations?	___	___
	(b) Does this evidence avoid stereotypes when determining whether a particular disability is likely to incur significant injury during physical or athletic activities?	___	___
87.	Are all facilities used for physical education or recreation accessible to persons with disabilities?	___	___

		Yes	No
	Specific Examples:		
	(a) Restrooms	___	___
	(b) Locker rooms and showers	___	___
	(c) Training and weight rooms	___	___
	(d) Entrances to basketball courts	___	___
	(e) Offices	___	___
88.	Are students with disabilities involved in the process of creating programs or activities, ensuring accessibility, or purchasing equipment?	___	___
89.	Does the institution provide physical education courses and athletic activities for disabled students separate and distinct from those provided for non-disabled students?	___	___
90.	If the answer to question 89 is "yes," does the institution allow disabled students to participate in the courses and activities that are not separate and distinct?	___	___
91.	Does the institution provide auxiliary aids and devices, such as interpreters, to disabled students for use in physical education courses and athletic activities?	___	___
92.	Has the institution communicated to all students, in formats accessible to disabled students, the institution's policies and practices regarding physical education and athletic activities?	___	___

If so, attach copies of any relevant communications.

Counseling Services

		Yes	No
93.	Does the institution provide counseling services to its students, including, but not limited to, personal, academic, or vocational counseling? If the answer is "no," skip to the next section.	___	___

94. If the answer to question 93 is "yes," has the institution evaluated each kind of counseling service it offers to determine if the service discriminates or has an adverse or disproportionate impact on disabled students in any of the following manners:

Yes No

(a) Availability of counseling service ___ ___

(b) Accessibility of locations involved in the counseling service ___ ___

(c) Availability of assistive devices necessary for disabled students to take advantage of the services provided ___ ___

95. Has the institution reviewed its policies and practices related to its counseling services to determine whether there is discrimination in the counseling services provided to disabled students? ___ ___

For example:

(a) Do counselors try to discourage persons with disabilities from certain courses or careers because of potential barriers or discrimination? ___ ___

(b) Do counselors identify barriers for courses or careers in a non-judgmental manner but fail to discuss possible accommodations or the students' rights under the ADA? ___ ___

(c) Do counselors avoid providing information about courses or careers or other opportunities because of assumptions or stereotypes about the interests or abilities of students with different disabilities? ___ ___

(d) Are counselors familiar with Title I's requirements for employers? ___ ___

96. Does the institution have a procedure to ensure that the manner or process in which counseling services are administered does not discriminate against disabled students? ___ ___

If so, describe the procedure and attach any relevant documentation.

____

____

____

97. Has the institution communicated to all students, in a manner accessible to students with hearing and vision impairments, the institution's policies and practices relating to:

(a) The availability of counseling ___ ___

Yes No

(b) The process(es) to obtain counseling services ___ ___

(c) The procedures to request personal assistance or auxiliary aids to fully participate and benefit from counseling services ___ ___

If so, describe the method of communication used and attach copies of any notices distributed or posted.

____
____
____

98. Does the institution contract with any "outside" organizations to provide counseling services to its students (e.g., drug abuse, family planning, etc.)? ___ ___

99. Has the institution taken steps to ensure that the administration and provision of counseling services by any "outside" organization does not have an adverse impact or discriminatory effect on disabled students? ___ ___

If so, describe these steps and attach any relevant documentation.

____
____
____

100. Has the institution taken steps to ensure that all personnel involved in counseling services (including those involved with the "outside" organizations) are aware of their responsibilities under the ADA? ___ ___

Clubs and Organizations

(See Form 7.7.2)

101. Does the institution provide any assistance, financial or otherwise, to student government, social organizations, fraternities or sororities, or other clubs or organizations? [Assistance includes money and use of campus equipment or transportation and inclusion in the institution's materials on student activities. It may include use of campus facilities, ability to publicize events, and/or official recognition.] If the answer is "no," skip to the next section. ___ ___

102. Has the institution reviewed the membership practices of each club or organization that receives assistance from the institution? ___ ___

103. Did the survey cover the issues identified below and in sample form 7.7.2? ___ ___

		Yes	No
104.	Do any of the membership practices of these organizations discriminate or have the effect of discriminating against disabled students?		
105.	Has the institution reviewed the policies and practices of these organizations to ensure that there is no discrimination against disabled students in the activities of these organizations, including, but not limited to:		
	(a) The provision of auxiliary aids and services to allow disabled students to participate in and enjoy the benefits of these organizations		
	(b) The accessibility of the locations/facilities where meetings or events of these organizations are held		
106.	Have each of these clubs and organizations been informed of their obligations relating to non-discrimination against disabled students under the ADA?		
107.	Has the institution notified each club and organization of the contact person available to address concerns and answer questions relating to the ADA?		
108.	Has the institution communicated to its students, in a format that is accessible to persons with hearing and vision impairments, the non-discrimination and accessibility requirements of the ADA?		

If so, describe the method of communication used and attach copies of any notices distributed or posted.

Placement Services

		Yes	No
109.	Does the institution provide placement services to its students, including, but not limited to, the following:		
	(a) Placement counseling		
	(b) Placement opportunities, for example, posting of job openings		
	(c) Interview training and resume preparation		
	(d) Arrangement for on-campus recruitment by employers		

		Yes	No
110.	If the answer to question 109 is "yes," has the institution reviewed its policies and practices relating to its placement services to ensure that there is no discrimination against disabled students, including discrimination in the following areas:		
(a)	The availability and nature/substance of counseling, for example counseling disabled students against certain career choices	___	___
(b)	Restrictions on the number of placement opportunities, including interviews	___	___
(c)	The availability and quality of training	___	___
(d)	Accessibility of placement offices and facilities used for on-campus recruitment	___	___
(e)	Provision of auxiliary aids and services during placement counseling and recruitment interviews	___	___
111.	Has the institution informed recruiting employers conducting interviews on campus of their obligations relating to non-discrimination with respect to the disabled under the ADA and as a condition of on-campus recruiting?	___	___
112.	Has the institution communicated to all students, in a format that is accessible to students with hearing and vision impairments, placement opportunities that are available?	___	___

If so, describe the method of communication used and attach copies of any notices distributed or posted.

____

____

____

		Yes	No
113.	Has the institution communicated to all students, in a format that is accessible to students with hearing and vision impairments, the process whereby they can request accommodations in placement services?	___	___

If so, describe the method of communication used and attach copies of any notices distributed or posted.

____

____

____

Work-Study Programs

		Yes	No
114.	Does the institution/department provide work-study programs for its students? If the answer is "no," skip to the next section.	___	___
115.	If the answer to question 114 is "yes," has the institution reviewed its policies and procedures related to all work-study programs?	___	___
116.	Do any of the policies and procedures related to work- study programs have an adverse or disproportionate impact on persons with disabilities, including, but not limited to:		
(a)	Qualification restrictions for entry into the programs	___	___
(b)	The availability of open positions	___	___
(c)	The nature or substance of the work-study performed	___	___
(d)	Restrictions on procedures to be followed during the work-study	___	___
(e)	Prohibitions against the use of personal assistants	___	___
(f)	Restrictions on the work hours and location of work	___	___
117.	Has an audit been conducted of all work-study opportunities of the areas covered under Title I? (See Chapter 6.2 and 6.3.)	___	___
118.	Has the institution informed any organizations independent of the institution that are involved in the administration of the work-study programs of their obligations relating to non-discrimination and accessibility under the ADA?	___	___
119.	Has the institution informed all faculty and staff that are involved in the administration of the work-study programs of their obligations relating to non- discrimination and accessibility under the ADA?	___	___
120.	Has the institution communicated to all students, in a format that is accessible to students with hearing and vision impairments, the work-study programs that are available?	___	___

If so, describe the method of communication used and attach copies of any notices distributed or posted.

____

____

____

Yes No

121. Has the institution communicated to all students in a format that is accessible to students with hearing and vision impairments the process whereby they can request accommodations in work-study programs? ___ ___

If so, describe the method of communication used and attach copies of any notices distributed or posted.

___

___

___

122. Are there any organizations or entities independent of the institution (including the government) that are involved in the administration of the work-study programs? ___ ___

123. If the answer to question 122 is "yes," has the institution informed these organizations of their obligations of non-discrimination and accessibility under the ADA? ___ ___

Travel

124. Does the institution/department offer academic programs or courses in other cities or countries? ___ ___

125. Does the institution/department sponsor tours of other cities or countries? ___ ___

126. Does the institution/department offer course credit for internships in other cities or countries? ___ ___

127. Does the institution have employees or faculty who travel to other locations for conferences, seminars, speeches, workshops or other official functions? ___ ___

If any answer to questions 124-127 is "yes," answer the following questions.

128. Are employees and students with disabilities offered the same opportunities to participate in the programs as individuals without disabilities? ___ ___

129. Do all contracts with tour groups or travel agencies include provisions for participants with disabilities? ___ ___

130. Do all departments developing programs in other cities or countries

		Yes	No
	incorporate accessibility into their planning, including accessibility to persons with mobility, speech, and hearing impairments in:		
(a)	Travel arrangements	___	___
(b)	Ground transportation	___	___
(c)	Lodging	___	___
(d)	Programs offered	___	___
131.	Do policies and procedures exist to ensure that employees or students with disabilities traveling on institutional business are not denied reimbursement for accessible transportation, lodging, or auxiliary aids and services?	___	___

CHAPTER 7.4 SAMPLE AUDIT OF "PUBLIC" SERVICES

[NOTE: The areas addressed in this audit include programs and services that are open to the public, guests visiting the campus, and employees, as well as students.]

Instructions: Answer the following questions for your department, program, or area of responsibility. A General Action Form (Chapter 7.7.1) should be completed for all issues that may need to be changed or improved. This form should also be used for any response that requires a description of procedures or planned improvements. Potential problems or recommendations can be grouped together if they are within the same type of program. In addition, each department or program that contracts with others (e.g., guest performers) should answer questions 112-115.

Fine and Performing Arts and Movies	Yes	No
1. Does the institution or any department support or sponsor theatrical or other kinds of artistic performances or movies that are open to the student body and/or the public?	___	___
If so,		
(a) Has a member of the task force prepared a list of all departments or sponsoring groups that offer such programs?	___	___
(b) Has an audit addressing the areas below been conducted of each such department/group?	___	___
2. Do these performances accommodate the needs of disabled students or members of the public attending the performances?	___	___
3. Are the facilities that house theatrical and other artistic performances accessible to persons with disabilities, including, but not limited to:		
(a) Accessible parking	___	___
(b) At least one accessible entrance that is marked, with appropriate signage at inaccessible entrances	___	___
(c) Seating for wheelchair users	___	___
(d) Elevators and/or ramps as an alternative to stairs leading to accessible seating	___	___
(e) Aisles of appropriate width and slope leading to accessible seating	___	___
(f) At least one accessible restroom for each sex in the facility,		

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			Yes	No
		with appropriate signage at accessible and inaccessible bathrooms	___	___
	(g)	Accessibility of other services open to the public	___	___
4.		Is there seating that is accessible to persons with disabilities that is sufficient to meet demand?	___	___
5.		Do the facility/department/program's plans for accessible seating in an integrated setting accommodate:		
	(a)	Wheelchair users	___	___
	(b)	Persons with other mobility impairments that may have difficulty with steps, distances, or steep slopes	___	___
	(c)	Persons with vision or hearing impairments who may need seating close to the stage (e.g., to speech read)	___	___
	(d)	Persons who wish to have interpreter services and must be close to the stage	___	___
6.		Is the accessible seating segregated from that provided to non-disabled persons?	___	___
		If so:		
	(a)	Does the segregation result in better lines of sight than other seating?	___	___
	(b)	Are there plans to make seating available at other locations?	___	___
7.		Does the institution and/or department allow the guests/companions of persons with disabilities to sit next to the disabled person? If the answer is "no," this may be discrimination. If the answer is "yes," answer the following:	___	___
	(a)	Are there any limits on the number of disabled and non-disabled individuals who can sit together?	___	___
	(b)	Is the availability of accessible seating, as a whole, equivalent to that available to persons without disabilities?	___	___
	(c)	Do persons with disabilities have the same ability as persons without disabilities to purchase seating for groups prior to or the day of performances?	___	___

Yes No

8. Does the institution and/or department provide, upon request and without charge, auxiliary aids and services to accommodate disabled persons attending these performances, such as:

   (a) Alternative formats, such as written or braille programs or scripts of performance, for hearing- and vision-impaired persons ___ ___

   (b) Magnifying glasses for vision-impaired persons ___ ___

   (c) Assistive listening devices for hearing-impaired persons ___ ___

   (d) Personal assistants to aid disabled persons with seating and other needs ___ ___

   (e) Appropriate lighting and/or seating for individuals with hearing and vision impairments (e.g., reserved seating close to the stage for persons who speech read) ___ ___

   (f) Interpreters or signers ___ ___

   If so, describe the procedure used to provide these services and any resources that are available.

   ____

   ____

   ____

9. Are all movies/films on campus sponsored by the institution or campus organizations accessible to persons with disabilities? ___ ___

   Specific Examples:

   (a) Are they scheduled in accessible facilities with accessible seating? (See questions 3-7.) ___ ___

   (b) Are soundtracks provided with open and/or closed captioning or other appropriate auxiliary aids or services for persons with hearing impairments (e.g., interpreters) upon request? ___ ___

   (c) Is the audio system equipped with an assistive listening system? ___ ___

10. Has the institution and/or department evaluated its policies and procedures regarding theatrical and other artistic performances to ensure that

		Yes	No
	they do not have an adverse or disproportionate impact on disabled persons?	___	___
	Specific Examples. Are there:		
(a)	Prohibitions against service animals or guide dogs	___	___
(b)	Exclusions of persons with disabilities	___	___
(c)	Limits on the number of persons with disabilities who can attend or sit together	___	___
(d)	Requirements for attendants	___	___
(e)	Limited or segregated accessible seating	___	___
(f)	Limited accessible seating at prices and views comparable to those for non-disabled seating	___	___
(g)	Imposition of fees for auxiliary aids or higher charges for accessible seating	___	___
11.	Does the institution and/or department advertise or publicize its theatrical performances in a manner or format for disabled persons, for example, a telephone listing of events for persons with visual impairments to supplement posters or newspaper ads?	___	___
12.	Does the institution and/or department advertise or publicize the availability of accessible performances and auxiliary aids and services, as well as the procedures for requesting such aids and services?	___	___
	If so, describe these procedures and attach samples of advertising. ______________________________ ______________________________ ______________________________		
13.	Does the institution provide separate theatrical or other artistic performance opportunities to persons with disabilities?	___	___
14.	If the answer to question 13 is "yes," does the institution allow qualified disabled persons the opportunity to participate in or attend performances that are available to non-disabled persons?	___	___
15.	Does the institution provide equal or similar opportunities for disabled persons to participate in theatrical or other artistic performances supported by the institution?	___	___

Yes No

Specific Examples:

(a) Are individuals with disabilities allowed to join theater companies, dance groups, clubs, and bands if they are otherwise qualified? ___ ___

(b) Are the facilities used for rehearsals and performances accessible, or are accessible facilities available through rescheduling (e.g., access to the stage for a performer, access to backstage areas for a make-up or audio-visual technician who uses a wheelchair)? ___ ___

(c) Are auxiliary aids and services available upon request, without charge, to performers or participants with disabilities (e.g., braille or reader services for visually impaired singers, interpreter services for a deaf director or stage crew member)? ___ ___

(d) If there are any qualifications standards that would deny participation based upon a disability, have they been reviewed to ensure that they are legitimate, defensible qualification standards? ___ ___

(e) Is there a procedure in existence for individuals to request accommodations or challenge qualification standards? ___ ___

If so, describe the procedure and attach a copy of any written procedure.

____

____

____

Televisions

16. Does the institution provide television rooms or televisions in common areas for use by students and/or the public? If the answer is "no," skip to the next section. ___ ___

17. If the answer to question 16 is "yes," are these televisions equipped for decoders and/or assistive listening devices? ___ ___

18. Is there a procedure to respond to requests to make these services accessible to persons with hearing impairments (e.g., through captioning decoders and assistive listening devices at requested locations, or an equivalent service)? ___ ___

Yes No

19. Are these services located in rooms accessible to persons with mobility impairments? ___ ___

Lecture Series and Seminars

20. Does the institution or any department support or sponsor lecture series and/or seminars on campus facilities that are open to the student body and/or the public? ___ ___

If so,

(a) Has a member of the task force prepared a list of all departments or sponsoring groups that offer such programs? ___ ___

(b) Has an audit addressing the areas below been conducted of each such department/group? ___ ___

21. Do these lectures and seminars accommodate the needs of disabled students or members of the public attending the series? ___ ___

22. Are the facilities that house lecture series and seminars accessible to persons with disabilities, including, but not limited to:

(a) Accessible parking ___ ___

(b) At least one accessible entrance that is marked, with appropriate signage at inaccessible entrances ___ ___

(c) Seating for wheelchair users ___ ___

(d) Elevators and/or ramps as an alternative to stairs leading to accessible seating ___ ___

(e) Aisles of appropriate width and slope leading to accessible seating ___ ___

(f) At least one accessible restroom for each sex in the facility, with appropriate signage at accessible and inaccessible bathrooms ___ ___

(g) Other services open to the public ___ ___

23. Is there seating accessible to persons with disabilities that is sufficient to meet the demand? ___ ___

			Yes	No
24.	Do the facility/department/program's plans for accessible seating in an integrated setting accommodate:			
	(a)	Wheelchair users	___	___
	(b)	Persons with other mobility impairments that may have difficulty with steps, distances, or steep slopes	___	___
	(c)	Persons with vision or hearing impairments who may need seating close to the stage (e.g., to speech read)	___	___
	(d)	Persons who wish to have interpreter services and must be close to the stage	___	___
25.	Is the accessible seating segregated from that provided to non-disabled persons? If so:		___	___
	(a)	Does the segregation result in better lines of sight than other seating? and	___	___
	(b)	Are there plans to make accessible seating available at other locations?	___	___
26.	Does the institution and/or department allow the guests/companions of the disabled person to sit next to the disabled person? If the answer is "no," this may be discrimination. If the answer is "yes," answer the following:		___	___
	(a)	Are there any limits on the number of disabled and non-disabled individuals who can sit together?	___	___
	(b)	Is the seating availability, as a whole, equivalent to that available to persons without disabilities?	___	___
	(c)	Do persons with disabilities have the same ability as persons without disabilities to purchase seating for groups prior to or the day of the lecture or seminar?	___	___
27.	Does the institution and/or department provide, upon request, auxiliary aids and services to accommodate disabled persons attending these lectures and seminars, such as:			
	(a)	Alternative formats, such as written or braille programs or copies of overheads, of lectures or seminars for hearing- and vision-impaired persons	___	___

		Yes	No
(b)	Magnifying glasses for vision-impaired persons	__	__
(c)	Headsets that magnify the volume of the lecture or seminar or other alternative listening devices for hearing-impaired persons	__	__
(d)	Personal assistants to aid disabled persons with seating and other needs	__	__
(e)	Appropriate lighting and/or seating for individuals with hearing and vision impairments (e.g., reserved seating close to stage for persons who speech read)	__	__
(f)	Interpreters or signers	__	__

If so, describe the procedure used to provide these services and any resources that are available.

		Yes	No
29.	Does the institution and/or department advertise or publicize its lecture series and seminars in a manner or format for disabled persons, for example, a telephone listing of events for persons with visual impairments to supplement posters or newspaper ads?	__	__
30.	Does the institution and/or department advertise or publicize the availability of accessible lectures and seminars and auxiliary aids and services, as well as the procedures for requesting such aids and services?	__	__

If so, describe these procedures and attach samples of advertising.

		Yes	No
31.	Does the institution provide separate lecture series and seminars for persons with disabilities?	__	__
32.	If the answer to question 31 is "yes," does the institution allow qualified disabled students the opportunity to attend the lectures and seminars attended by non-disabled persons?	__	__
33.	Does the institution provide accommodations required by guest lecturers or performers with disabilities, including accessible facilities and interpreter services or other auxiliary aids?	__	__

			Yes	No
		Athletic Events and Recreation		
		[Note: This section addresses equal access for spectators. Student participation is covered in Chapter 7.3]		
34.		Does the institution or any department support or sponsor athletic or recreational events on campus facilities that are open to the student body and/or the public?	___	___
		If so,		
	(a)	Has a member of the task force prepared a list of all departments or sponsoring groups that offer such programs?	___	___
	(b)	Has an audit addressing the areas below been conducted of each such department/group?	___	___
35.		Does the institution accommodate the needs of disabled students or members of the public attending these events?	___	___
36.		Are the facilities that house athletic and recreational events (e.g., stadiums and gymnasiums) accessible to persons with disabilities, including, but not limited to:		
	(a)	Accessible parking	___	___
	(b)	At least one accessible entrance that is marked, with appropriate signage at inaccessible entrances	___	___
	(c)	Seating for wheelchair users	___	___
	(d)	Elevators and/or ramps as an alternative to stairs leading to accessible seating	___	___
	(e)	Aisles of appropriate width and slope leading to accessible seating	___	___
	(f)	At least one restroom for each sex in the facility with appropriate signage at accessible and inaccessible bathrooms	___	___
	(g)	Concession stands that are accessible to individuals with disabilities, or alternative services	___	___
	(h)	Offices and press areas accessible to members of the press or visitors with disabilities	___	___

			Yes	No
	(i)	Other services open to the public	___	___
37.	Is there seating accessible to persons with disabilities that is sufficient to meet the demand?		___	___
38.	Do the facility/department/program's plans for accessible seating in an integrated setting accommodate:			
	(a)	Wheelchair users	___	___
	(b)	Persons with other mobility impairments that may have difficulty with steps, distances, or steep slopes	___	___
	(c)	Persons with vision or hearing impairments who may need seating close to the court/playing field	___	___
39.	Is the accessible seating segregated from that provided to non-disabled persons? If so:		___	___
	(a)	Does the segregation result in better lines of sight than other seating? and	___	___
	(b)	Are there plans to make seating available at other locations?	___	___
40.	Does the institution and/or department allow the guests/companions of the disabled person to sit next to the disabled person? If the answer is "no," this may be discrimination. If the answer is "yes," answer the following:		___	___
	(a)	Are there any limits on the number of disabled and non-disabled individuals who can sit together?	___	___
	(b)	Is the seating availability, as a whole, equivalent to that available to persons without disabilities?	___	___
	(c)	Do persons with disabilities have the same ability as persons without disabilities to purchase seating for groups prior to or the day of athletic/recreation events?	___	___
41.	Does the institution and/or department provide, upon request, auxiliary aids and services to accommodate disabled persons attending these events, such as:			
	(a)	Alternative formats, such as written or braille programs for hearing- and vision-impaired persons	___	___

Yes No

(b) Magnifying glasses for vision-impaired persons ___ ___

(c) Assistive listening devices for hearing-impaired persons ___ ___

(d) Personal assistants to aid disabled persons with seating and other needs ___ ___

(e) Appropriate lighting and/or seating for individuals with hearing and vision impairments (e.g., reserved seating close to the court or field for persons who speech read) ___ ___

(f) Interpreters or signers ___ ___

If so, describe the procedure used to provide these services and any resources that are available.

____

____

____

42. Has the institution and/or department evaluated its policies and procedures regarding athletic and recreational events to ensure that they do not have an adverse or disproportionate impact on disabled persons? ___ ___

Specific Examples:

(a) Prohibitions against service animals or guide dogs ___ ___

(b) Exclusion of persons with disabilities ___ ___

(c) Limits on the number of persons with disabilities who can attend or sit together ___ ___

(d) Requirements for attendants ___ ___

(e) Limited or segregated accessible seating ___ ___

(f) Limited accessible seating at prices and views comparable to those for non-disabled seating ___ ___

(g) Imposition of fees for auxiliary aids or higher charges for accessible seating ___ ___

43. Does the institution and/or department advertise or publicize its athletic and recreational events in a manner or format for disabled persons, for

Yes No

example a telephone listing of events for persons with visual impairments to supplement posters or newspaper ads? ___ ___

44. Does the institution and/or department advertise or publicize the availability of accessible events and auxiliary aids and services, as well as the procedures for requesting such aids and services? ___ ___

If so, describe these procedures and attach samples of advertising.

____

____

____

45. Does the institution schedule particular events or games for persons with disabilities: ___ ___

    (a) If so, are persons with disabilities given the same options to attend other events as persons without disabilities? ___ ___

Libraries, Museums, and Tours

46. Does the institution operate or support libraries or museums on campus that are open to the student body and/or the public? ___ ___

47. Do these services accommodate the needs of disabled students or members of the public using these services? ___ ___

48. Are the facilities that house these services accessible to persons with disabilities, including, but not limited to:

    (a) Accessible parking ___ ___

    (b) At least one accessible entrance that is marked, with appropriate signage at inaccessible entrances ___ ___

    (c) Seating for wheelchair users ___ ___

    (d) Elevators and/or ramps as an alternative to stairs leading to accessible seating ___ ___

    (e) Aisles of appropriate width and slope leading to accessible seating ___ ___

    (f) At least one accessible restroom for each sex in the facility, with appropriate signage at accessible and inaccessible bathrooms ___ ___

Yes No

(g) Other services open to the public ___ ___

49. If all aspects of the facilities are not accessible (e.g., basement areas of libraries not accessible by an elevator or narrow aisles between shelves):

(a) Are alternatives provided for program access (e.g., assistants to retrieve books) ___ ___

(b) Are these alternatives equally effective so that individuals with disabilities have the same access as others ___ ___

[Note: For libraries, high shelves are not a barrier if assistance is provided. It is a more difficult question whether access is equivalent if floors or aisles are inaccessible.]

50. Does the institution provide auxiliary aids and services to accommodate disabled persons in accessing the services or programs of the museum or library, such as:

(a) Alternative formats for card catalogs and research services for hearing- and vision-impaired persons ___ ___

(b) Interpreters or signers for hearing-impaired persons requesting assistance offered to others ___ ___

[Note: There is nothing in the DOJ or DOEd regulations to require any library to offer books in alternate formats, readers, or captioned films. These services may be necessary for students as part of academic programs. Libraries must make their own services accessible, and perhaps order materials in alternate formats if they can be obtained without charge. The DOEd, which has jurisdiction under Title II of all public libraries, has issued no guidance on library services.]

51. Has the institution and/or department evaluated its policies and procedures regarding these "public" services to ensure that they do not have an adverse or disproportionate impact on disabled persons, such as:

(a) Prohibitions against animals, such as service animals or guide dogs ___ ___

(b) Exclusion of persons with disabilities from certain areas or activities ___ ___

52. Does the institution and/or department advertise or publicize the availability of auxiliary aids and services, as well as the procedures for requesting such aids and services? ___ ___

Yes No

53. Does the institution provide separate services for disabled persons (e.g., separate tours or museum programs)? ___ ___

54. If the answer to question 53 is "yes," does the institution allow disabled persons the opportunity to use the "public" services that are available to non-disabled persons if they desire? ___ ___

55. Has the institution and/or department taken steps to ensure that any independent organizations that operate any of the campus libraries or museums have complied with their obligations of non-discrimination and accessibility under the ADA? ___ ___

56. Does the institution offer any tours of its facilities, including tours of museums, historic buildings, or the campus, to students or visitors? ___ ___

57. If the answer to question 56 is "yes":

    (a) Are there any criteria, policies, or procedures that deny participation based on disability? ___ ___

    (b) Are auxiliary aids and services provided to make the tour accessible to persons with hearing and vision impairments (e.g., interpreters, assistive listening devices, description of any written materials)? ___ ___

    (c) Is the path of the tour accessible to persons with mobility impairments to the extent feasible? ___ ___

58. Does the institution or any department sponsor or co-sponsor tours of other locations? ___ ___

[Note: An individual professor's involvement with a foreign tour is probably not a program of the institution; an annual tour for alumni and students sponsored by the institution or from which the institution receives revenues might be.]

59. If the answer to question 58 is "yes,"

    (a) Are there any criteria, policies, or procedures that deny participation based on disability? ___ ___

    (b) Are auxiliary aids and services provided to make the tour accessible to persons with hearing and vision impairments

	Yes	No
(e.g., interpreters, assistive listening devices, description of any written materials)?		
(c) Is the path of the tour accessible to persons with mobility impairments to the extent feasible given the nature of the facilities?		

Banks, Post Offices, Book Stores, and Other Public Services

	Yes	No
60. Does the institution operate, support or lease space to banks, post offices, book stores, franchises, hotels, or other "public accommodations" that are open to students and the public?		
(a) Has a member of the task force prepared a list of all such "public accommodations"?		
(b) Has an audit been conducted of all such services operated by the institution addressing the issues below?		
(c) Have the following issues been addressed with each tenant or vendor and been incorporated into contracts?		
61. Do these services accommodate the needs of disabled students or members of the public using these services?		
62. Are the facilities that house these services accessible to persons with disabilities, including, but not limited to:		
(a) Accessible entrances		
(b) Appropriate height or braille labels on vending machines, stamp dispensers, or automated teller machines		
(c) Elevators and/or ramps as an alternative to stairs		
(d) Aisles of appropriate width and slope		
(e) Accessible parking		
(f) Teller windows		
(g) Other services		

Yes No

63. If the facilities are not accessible, are alternative services provided to ensure that the service as a whole is accessible? ___ ___

Specific Examples. Is there:

(a) Assistance to retrieve books or goods from inaccessible shelves ___ ___

(b) Curbside service for an inaccessible store or bank ___ ___

[For other examples, consult Title III regulations and the DOJ Title III Technical Assistance Manual.]

64. Does the institution and/or vendor provide auxiliary aids and services to accommodate disabled persons using these services, such as:

(a) Alternative formats, such as written or braille instructions on the use of vending machines, for hearing- and vision-impaired persons ___ ___

(b) Interpreters or signers for hearing-impaired persons ___ ___

65. Has the institution evaluated its policies and procedures or those of vendors regarding these "public" services to ensure that they do not have an adverse or disproportionate impact on disabled persons, such as prohibitions against service animals? ___ ___

66. Does each facility/service advertise or publicize the availability of auxiliary aids and services, as well as the procedures for requesting such aids and services? ___ ___

67. Has the institution taken steps to ensure that any independent organizations that operate a campus bank, post office, or any other public service have complied with their obligations of non-discrimination and accessibility under the ADA? (See questions 112-115.) ___ ___

Graduation and Other Public Events

68. Does the institution or any department host or sponsor graduation ceremonies or other public events on campus facilities that are open to the student body and/or the public? ___ ___

69. Do these events accommodate the needs of disabled students or members of the public attending these events? ___ ___

			Yes	No
70.	Are the facilities that house these events accessible to persons with disabilities, including, but not limited to:			
	(a)	Accessible parking	___	___
	(b)	At least one accessible entrance that is marked, with appropriate signage at inaccessible entrances	___	___
	(c)	Seating for wheelchair users	___	___
	(d)	Elevators and/or ramps as an alternative to stairs leading to accessible seating	___	___
	(e)	Aisles of appropriate width and slope leading to accessible seating	___	___
	(f)	At least one accessible restroom for each sex in the facility, with appropriate signage at accessible and inaccessible bathrooms	___	___
	(g)	Other services open to the public	___	___
71.	Is there seating accessible to persons with disabilities that is sufficient to meet the demand?		___	___
72.	Do the facility/department/program's plans for accessible seating in an integrated setting accommodate:			
	(a)	Wheelchair users	___	___
	(b)	Persons with other mobility impairments that may have difficulty with steps, distances, or steep slopes	___	___
	(c)	Persons with vision or hearing impairments who may need seating close to the stage (e.g., to speech read)	___	___
	(d)	Persons who wish to have interpreter services and must be close to the stage	___	___
73.	Is the accessible seating segregated from that provided to non-disabled persons? If so:		___	___
	(a)	Does the segregation result in better lines of sight than other seating? and	___	___

Yes No

(b) Are there plans to make seating available at other locations? ___ ___

74. Does the institution and/or department allow the guests/companions of the disabled person to sit next to the disabled person? If the answer is "no," this may be discrimination. If the answer is "yes," answer the following: ___ ___

(a) Are there any limits on the number of disabled and non-disabled individuals who can sit together? ___ ___

(b) Is the seating availability as a whole equivalent to that available to persons without disabilities? ___ ___

(c) Do persons with disabilities have the same ability as persons without disabilities to purchase or receive seating for groups prior to or the day of the events? ___ ___

75. Does the institution and/or department provide auxiliary aids and services to accommodate disabled persons attending these events upon request and without charge, such as:

(a) Alternative formats, such as written or braille programs, for hearing- and vision-impaired persons ___ ___

(b) Alternative listening devices for hearing-impaired persons ___ ___

(c) Interpreters or signers ___ ___

76. Has the institution and/or department evaluated its policies and procedures regarding these events to ensure that they do not have an adverse or disproportionate impact on disabled persons, such as:

(a) Prohibitions against service animals ___ ___

(b) Limited accessible seating ___ ___

(c) Limited accessible seating at prices and views comparable to those for non-disabled seating ___ ___

77. Does the institution and/or department advertise or publicize the availability of auxiliary aids and services, as well as the procedures for requesting such aids and services? ___ ___

78. If the institution provides an alternative method of making graduation or

Yes No

similar events accessible without structural renovations, such as closed-circuit broadcasts:

(a) Is this alternative available to persons without disabilities (e.g., can families sit together)? — —

(b) Has a determination been made that this method provides access to the event in an integrated setting? — —

Cafeterias, Dining Areas, Pubs, and Other Food Service Areas

79. Does the institution provide dining areas, such as cafeterias, to its students and/or public? — —

If so,

(a) Has a member of the task force prepared a list of all departments or sponsoring groups that offer such programs? — —

(b) Has an audit addressing the areas below been conducted of each such department/group? — —

80. Do these services accommodate the needs of disabled students or members of the public who desire to use these services? — —

81. Are the facilities that house these services accessible to persons with disabilities, including, but not limited to:

(a) Accessible parking — —

(b) At least one accessible entrance that is marked, with appropriate signage at inaccessible entrances — —

(c) Seating for wheelchair users — —

(d) Elevators and/or ramps as an alternative to stairs leading to accessible seating — —

(e) Aisles of appropriate width and slope leading to accessible seating — —

(f) At least one accessible restroom for each sex in the facility, with appropriate signage at accessible and inaccessible bathrooms — —

		Yes	No
	(g) Other services open to the public	___	___
82.	Is there seating accessible to persons with disabilities that is sufficient to meet the demand?	___	___
83.	Do the facility/department/program's plans for accessible seating in an integrated setting accommodate:		
	(a) Wheelchair users	___	___
	(b) Persons with other mobility impairments that may have difficulty with steps, distances, or steep slopes	___	___
84.	Is the accessible seating segregated from that provided to non-disabled persons?	___	___
	If so,		
	(a) Are there plans to make seating available at other locations?	___	___
85.	Does the institution and/or department allow the guests/companions of the disabled person to sit next to the disabled person? If the answer is "no," this may be discrimination. If the answer is "yes," answer the following:	___	___
	(a) Are there any limits on the number of disabled and non-disabled individuals who can sit together?	___	___
	(b) Is the seating availability, as a whole, equivalent to that available to persons without disabilities?	___	___
86.	Does the institution and/or department provide auxiliary aids and services to accommodate disabled persons who desire to use these services, such as written or braille menus or alternatives for hearing- and vision-impaired persons?	___	___
87.	Has the institution and/or department evaluated its policies and procedures regarding these services to ensure that they do not have an adverse or disproportionate impact on disabled persons, such as:		
	(a) Prohibitions against animals, such as service animals or guide dogs	___	___
	(b) Denial of access to persons with disabilities because of fears or complaints by other patrons	___	___

		Yes	No
88.	Does the institution advertise or publicize the availability of auxiliary aids and services, as well as the procedures for requesting such aids and services?		
89.	Does the institution provide separate dining areas for persons with disabilities?		
90.	If the answer to question 89 is "yes," does the institution allow disabled persons the opportunity to utilize the services provided to non-disabled persons?		
91.	Has the institution taken steps to ensure that any independent organizations that operate a campus dining area/service have complied with their obligations of non-discrimination and accessibility under the ADA? (See questions 112-115.)		

Research Publications, Films, Books, TV or Radio Programs, and Tapes

		Yes	No
92.	Does the institution and/or any department sponsor or provide any of the following programs or services either for participation in or enjoyment by students or the public:		
(a)	Research publications		
(b)	Film production or distribution		
(c)	Book publishing		
(d)	Television programs (other than broadcast courses)		
(e)	Radio programs		
93.	If the answer to question 92 is "yes," has the institution and/or department reviewed these services to determine whether they are accessible to disabled students and the public?		

[Note: The regulations do not address what obligations, if any, might be imposed on public institutions that publish or produce books, films, and other programs. It is possible that certain "academic" programs (e.g., courses on tape or broadcast televised classrooms) must be made accessible and offered in accessible formats. Other types of goods and services, ranging from law reviews or research papers to documentaries, are ones that are not "public accommodations" under Title III if offered by a private entity. The following questions assume that because these are produced with public funds they are "services" of the state. The courts may adopt a different standard.]

Yes No

94. Are these goods or services provided on request, without charge, in alternative formats to persons with hearing or vision impairments? ___ ___

Examples:

(a) Are research papers, journals, books, and other publications of departments or programs provided in alternative formats, such as tape, braille, large print, or diskette? ___ ___

(b) Are films and television programs open or closed captioned for the hearing-impaired? ___ ___

(c) Are alternative formats available, such as written transcripts for television or radio programs, taped speeches or lectures, audio soundtracks of films, and other aurally delivered materials? ___ ___

95. Does the institution advertise or publicize the availability of alternative formats, as well as the procedures for requesting such alternate formats? ___ ___

96. Has the institution taken steps to ensure that any independent organizations that operate any of the campus services or programs identified in question 92 have complied with their obligations of non-discrimination and accessibility under the ADA? ___ ___

Social or Recreational Areas Owned/Operated by the College

97. Does the institution and/or any department own or operate any social or recreational areas that are open to its students or the public not previously covered in the surveys in chapters 7.2 or 7.3, including, but not limited to:

(a) Student unions, lounges, video rooms ___ ___

(b) Parks and other picnic or recreational areas ___ ___

(c) Golf courses or lakes ___ ___

(d) Spaces used for dances or parties ___ ___

(e) Other ___ ___

98. If any answer to question 97 is "yes," has the institution and/or department reviewed these services to determine whether they are accessible to disabled students and the public? ___ ___

		Yes	No
99.	Are the facilities that house these services accessible to persons with disabilities, including, but not limited to:		
	(a) Accessible parking	___	___
	(b) At least one accessible entrance that is marked, with appropriate signage at inaccessible entrances	___	___
	(c) Seating for wheelchair users	___	___
	(d) Elevators and/or ramps as an alternative to stairs leading to accessible seating	___	___
	(e) Aisles of appropriate width and slope leading to accessible seating	___	___
	(f) At least one accessible restroom for each sex in the facility, with appropriate signage at accessible and inaccessible bathrooms	___	___
	(g) Accessibility of other services open to the public or students	___	___
100.	Does the institution provide auxiliary aids and services to accommodate disabled persons using these services or areas?	___	___
101.	Has the institution evaluated its policies and procedures regarding these "public" services to ensure that they do not have an adverse or disproportionate impact on disabled persons, such as:		
	(a) Exclusion of persons with disabilities because of the risk of injury that does not meet the direct threat standard, or complaints by other customers	___	___
	(b) Prohibitions against service animals or guide dogs	___	___
102.	Does the institution advertise or publicize the availability of auxiliary aids and services, as well as the procedures for requesting such aids and services?	___	___
103.	Does the institution provide separate social or recreational services for disabled persons?	___	___
104.	If the answer to question 103 is "yes," does the institution allow disabled persons the same opportunity to attend other social and recreational events as non-disabled persons?	___	___

Yes No

105. Does the institution lease space to any independent organizations that operate any social or recreational programs or services for the institution? ___ ___

106. Has the institution taken steps to ensure that any independent organizations that operate any of the services or programs identified in question 105 have complied with their obligations of non-discrimination and accessibility under the ADA? (See questions 112-115.) ___ ___

Day Care

107. Does the institution offer and/or sponsor any form of child care, day care, or educational program (e.g., Head Start, tutoring, preschool) for children of students, employees, or the general public? If the answer is "no," skip to the next section. ___ ___

108. Are all child care and similar programs available to parents with disabilities on the same basis as parents without disabilities? ___ ___

Specific Examples:

(a) Are there any qualification standards that would deny services based upon the parent's disability? ___ ___

(b) Is information regarding child care programs provided in accessible formats on request? ___ ___

(c) Are auxiliary aids and services provided so that parents can participate in the program (e.g., conferences, special events)? ___ ___

(d) Are the facilities used accessible to parents with mobility impairments? ___ ___

109. Does the program have any qualification standards that exclude or tend to exclude children from the program because of their disabilities (e.g., children who are HIV positive or have significant special needs)? ___ ___

110. If the answer to question 109 is "yes," has the institution analyzed its admissions standards to determine whether they are defensible and that it would be an undue burden or a fundamental alteration of the program to change those standards? ___ ___

[Note: Exclusionary criteria are not necessarily unlawful, especially where a child has special needs that would require extra staff or severe behavioral problems that would affect other children. All criteria should be reviewed and

Yes No

should not be based on stereotypes or fears. Further guidance should be sought from the Department of Health and Human Resources, which has jurisdiction over public day care.]

111. If the answer to question 109 is "no," or if the program admits children with some types of disabilities, answer the following questions:

   (a) Are the facilities accessible to children with disabilities? ___ ___

   (b) Are appropriate auxiliary aids and services provided? ___ ___

   (c) Are all materials provided in accessible formats when needed? ___ ___

   (d) Is the program in compliance with all other laws regarding children with disabilities? ___ ___

Services Provided Under Contract or Agreement to Use Facilities of the College

Use of College Facilities for Programs Not Sponsored by the College

112. Does the institution permit community groups and others that receive no support from the institution to lease or use facilities of the college for meetings or events not sponsored by the college? ___ ___

113. If the answer to question number 112 is "yes," has the standard agreement regarding liability been modified to add:

   (a) Provisions that users of campus facilities may not discriminate ___ ___

   (b) Provisions on responsibility for auxiliary aids, including readers and interpreters ___ ___

   (c) Representations on the extent of access ___ ___

   (d) Indemnification provisions if the institution is sued under the ADA based upon the user's activities ___ ___

   (e) Provisions on the user's obligations, if any, under Title I, II, or III of the ADA ___ ___

Services Provided to Students or the Public Under Contract from the College

114. For each private or public entity that operates a place of public accom-

Yes No

modation on campus property or provides services to students or visitors:

(a) Has the institution made the entity aware of the ADA? ___ ___

(b) Has the agreement or lease been modified to reflect the issues in question 113? ___ ___

(c) Does the standard lease agreement also identify:

(1) Procedures for requesting accommodations ___ ___

(2) Timeline, if any, for requesting accommodations in advance ___ ___

(3) The respective responsibilities of the institution and vendor for physical access ___ ___

115. Has the institution taken steps to ensure, by contract or otherwise, that all services, programs, activities, and goods available on campus or through a joint venture or contract:

(a) Are physically accessible or alternatives are provided to ensure accessibility ___ ___

(b That appropriate auxiliary aids and services are provided on request without charge ___ ___

(c) That there are no exclusionary criteria or denial of services based upon disability that cannot be defended under the ADA ___ ___

(d) That information is provided on ways to request assistance ___ ___

Campus Security/Police and Emergency Services

116. Does the institution provide any emergency services to the public by telephone, such as:

(a) Rape crisis hotline ___ ___

(b) Victims' advocacy ___ ___

(c) Poison control ___ ___

(d) Suicide or other hotlines ___ ___

		Yes	No
	(e) Other	___	___
117.	Do these hotlines have a TDD/text telephone line?	___	___
	(a) If the answer is "no," are potential users advised of their need to use the relay service?	___	___
118.	Does the campus use any internal emergency response telephone system? If so,	___	___
	(a) Is each phone able to be used by a person who cannot speak or hear (e.g., through a TDD or an officer dispatched in response to pressing one button)?	___	___
	(b) Are these telephones accessible to persons with limited reach?	___	___
119.	Can campus police/security be reached through a TDD/text telephone?	___	___
	(a) If not, are members of the campus community with hearing impairments aware of the procedures for and need to contact 911 from a TDD to reach campus security?	___	___
120.	Have campus police/fire/rescue personnel been trained in procedures for handling emergency situations involving persons with disabilities, including proper methods of carrying disabled persons?	___	___
121.	Is there a fire evacuation plan for all facilities of more than one story identifying areas of rescue assistance on each floor?	___	___

Other Programs and Services

122.	Has the institution and/or department reviewed every program and service that it operates, co-sponsors, or supports in any way to determine whether it is accessible to disabled students and the public?	___	___
123.	If the answer to question 122 is "yes," has the institution and/or department audited these programs and services using the appropriate sample audits in Chapters 7.2, 7.3, and 7.4?	___	___

Purchasing of Goods and Services, Including Auxiliary Aids

124.	Do bids for all services provided by private entities require compliance with Title III as a condition of the bid? (See also Chapter 7.6.)	___	___

Yes No

125. Is there a procedure for ensuring that all auxiliary aids and services are appropriate to the needs of employees, students, and visitors? ___ ___

Specific Examples:

(a) Are there procedures to ensure that interpreters are qualified? ___ ___

(b) Is there an in-house or outside resource to ensure that assistive listening devices/systems are appropriate to the needs of those with hearing impairments? ___ ___

(c) Do all purchase agreements with vendors of books, films, training materials, etc. require that these be available on request in alternate formats? ___ ___

126. Have resource lists been developed of reputable vendors of assistive equipment? ___ ___

127. Is consideration given to accessibility when making large purchases? ___ ___

Examples:

(a) Furniture ___ ___

(b) Tables and counters ___ ___

(c) Laboratory equipment ___ ___

(d) Computer equipment ___ ___

128. Are individuals with disabilities, the disabled student coordinator, or the ADA coordinator consulted on purchases? ___ ___

Maintenance

129. Are there policies and procedures to ensure that all accessible features and elements are maintained? ___ ___

Specific examples:

(a) Elevators ___ ___

(b) Visual alarms ___ ___

(c) Ramps cleared of snow and ice ___ ___

		Yes	No
	(d) Assistive listening systems	___	___

Media Relations and Publicity

		Yes	No
130.	Are all rules governing confidentiality of medical conditions and disability followed in dealings with the media (e.g., no disclosure of the medical condition of any employee or student without his or her consent)?	___	___
131.	Are all publications of the institution available, on request, in alternative formats?	___	___
132.	Are all announcements of the institution's events made in alternate media accessible to persons with disabilities?	___	___
133.	Does all publicity regarding institution-sponsored events contain a statement that:		
	(a) The event will be accessible	___	___
	(b) Auxiliary aids and services will be provided on request	___	___
	(c) Gives the deadline (if any) for making requests	___	___
	(d) Gives the name and telephone number (and/or TDD number) of the person to contact to request accommodations	___	___
134.	Does the institution include persons with visible disabilities as members of the campus community in its publications and video productions?	___	___

7.5 OFF-CAMPUS PROGRAMS AND SERVICES

Title II and Title III of the ADA impose non-discrimination and accessibility requirements on all programs and services sponsored by or operated for any college or university, including those that are held off the main campus(es). Every institution must ensure that each of these off-campus programs and services meet the needs of disabled students who participate in such programs. The programs or services include, but are not limited to:

- Extension services
- Lecture series or tours
- Seminars
- Field trips
- Additional course requirements
- Other off-campus programs and services

Colleges and universities should follow the general rule that any program or service offered to non-disabled students, regardless of its location, must be made accessible to disabled students. Off-campus programs and services for which the institution has accessibility obligations under Title II fall into two categories:

(1) Programs and services operated by the institution at locations off the main campus, either alone or in conjunction with another entity

(2) Programs and services that are operated for the institution by other entities under contract with the institution

Programs and services in both of these categories should be audited as part of the institution's self-evaluation. Steps must be taken to ensure that persons with disabilities have access to those off-campus programs and services on the same basis as non-disabled participants. Accordingly, an audit of off-campus programs and services should be conducted similar to the audits of programs and services set forth in Chapters 7.2, 7.3, and 7.4.

The goal of auditing off-campus programs and surveying off-campus facilities, whether operated by the institution or by an independent organization, is to achieve the following:

(1) Identify all programs and services offered to students held at facilities located off the main campus

(2) Identify the sponsoring organization for each program or service

(3) Identify the name of the facility where the program or service is held

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(4) Determine whether the program or service is accessible to students or participants with disabilities (e.g., non-discrimination in admissions, requirements)

(5) Determine whether the facility that hosts the program or service is physically accessible to persons with disabilities

(6) If there are physical barriers, determine whether the institution has a procedure for relocating these programs or services in the event that they are deemed inaccessible or some other means to provide program access

(7) Determine whether the institution or independent sponsoring organization provides necessary auxiliary aids and services

(8) Identify any policies or procedures that relate to the participation of persons with disabilities in these programs or services

(9) Determine whether the institution has confirmed that the independent organizations that operate or sponsor programs and services are aware of their responsibilities under the ADA

Where the program or service is operated by an organization independent of the institution, the institution must confirm that this independent organization is aware of and intends to comply with its obligations under the ADA, or else terminate the contract. While the self-evaluation conducted of programs and services operated by independent organizations may differ from the audit of programs and services operated by the institution itself, both need to be carefully examined to ensure that the institution is taking necessary steps to comply with its obligations under the ADA.

SAMPLE AUDIT OF PROGRAMS AND SERVICES OPERATED BY THE INSTITUTION AT OFF-CAMPUS FACILITIES

		Yes	No
1.	Have academic programs and services been audited using the audit in Chapters 7.2?	___	___
2.	Have the facilities that house these programs and services been audited using the audit in Chapter 8.4 and/or the landlord-tenant audit in Chapter 7.6?	___	___
3.	Have student services and programs at those locations, if any, been audited using the audits in Chapters 7.3 and 7.4?	___	___

SAMPLE AUDIT FOR OFF-CAMPUS PROGRAMS AND SERVICES OPERATED BY AN INDEPENDENT ORGANIZATION

1.	Has the institution contracted with any independent organization to conduct programs or services to be held at off-campus locations?	___	___

		Yes	No
2.	Are any of these contracts up for renewal?	___	___
3.	Has the institution confirmed that each of these independent organizations has complied with its non-discrimination requirements under the ADA?	___	___
4.	Has the institution negotiated contractual provisions for new contracts or as addendums to existing contracts formalizing the responsibility of the independent organizations for the non-discrimination requirements in the programs or services they operate in accordance with the ADA? (See also landlord-tenant audit questions in Chapter 7.6.)	___	___

[NOTE: For the accessibility requirements of the program or service itself, repeat the questions in the appropriate audits in Chapters 7.2 and 7.3.]

Programs and services that are co-sponsored by the institution with an independent organization should be considered activities operated by the institution itself. Accordingly, the institution should take an active role in evaluating any programs and services that it co-sponsors to ensure that the ADA's non-discrimination and accessibility requirements are met.

7.6 LANDLORD AND TENANT ISSUES

A college or university that is a landlord or a tenant may have special obligations under the ADA. Some of these are clear. If a public college is associated with a private non-profit foundation that leases commercial space to a private "place of public accommodation" (e.g., a doctor's office or restaurant), the private foundation is subject to Title III requirements as an owner of a place of public accommodation. Private colleges have similar Title III obligations with respect to all of the facilities that they own or operate that contain a place of public accommodation, or for space that they lease to places of public accommodation (e.g., retail businesses). In complying with the respective requirements of Title II and Title III, public and private colleges and universities have slightly different obligations. For example, private colleges that lease space in off-campus areas must engage in barrier removal or provide auxiliary aids and services in those areas if they operate a place of public accommodation in that space (e.g., provide services to students). Public colleges are obligated to select accessible locations when leasing space for activities, and ensure that the program offered in that space is accessible, but do not have to spend money to remove barriers in existing spaces if program access can be provided through other means.

Colleges as Landlords

A public college that leases space to places of public accommodation is not itself a public accommodation under Title III because a "public accommodation" is defined as any private entity that owns, leases, leases to, or operates a place of public accommodation. It is unclear, however, whether a public institution can be held liable under Title II for its tenants' violations of Title III, which is the case with private landlords that rent space to places of public accommodation. Under Title II, a public college cannot enter into contracts that result in discrimination to students or beneficiaries. Therefore, a public community college could not subcontract food service operations to an entity in an inaccessible location. The courts will have to resolve the extent of this liability.

Tenants that lease space from public or private colleges or universities and operate places of public accommodation have the same obligations under Title III that they would have if they owned the location or rented from a private commercial landlord. In its proposed Title III regulations, the Department of Justice (DOJ) suggested that a private landlord would be responsible for barrier removal and modification of policies and procedures in the common areas of the building and that tenants would be responsible for those obligations within the spaces that they controlled. In its final regulation, the DOJ stated that as between the parties the lease between the landlord and the tenant would control their respective obligations for compliance with Title III, if the lease addressed such responsibility. The DOJ Technical Assistance Manual takes the position that in a suit by the DOJ or an individual under Title III, both the private landlord and the tenant are jointly responsible for complying with all Title III obligations applicable to a place of public accommodation. The same rule would apply to private, non-profit foundations or trusts or to private colleges or universities that are landlords.

If the private place of public accommodation to which a public college or university leases space is also a vendor for the institution, Title II prohibits the college or university from discriminating on the basis of a disability in contracting for the vendor's services. As a result, a public college may be liable under Title II for removing barriers in the area controlled by the vendor and for any discriminatory policies adopted by the vendor. The public college's liability under Title II arises out of its contract with the provider of goods or services; the liability is not necessarily the same as the public college's liability with respect to other "places of public accommodation" that may lease space for public events (e.g., a rock concert).

The following examples illustrate the difference between a public college's obligations under Title II and private entities' obligations under Title III when it leases space to a vendor:

Example 1

Many colleges allow banks to place ATMs on their campus. If a private college leases space on its campus to a bank to install an ATM, it is a landlord leasing space to a place of public accommodation. Under Title III, the college and the bank are both "public accommodations" responsible for all modifications necessary to remove barriers to using the ATM and the facility that houses it. Therefore, if the bank refuses to make changes to the ATM, or the parties failed to specify in their lease their responsibility, the college may be required to lower the ATM and fit it with the proper signage and other accessible features, in addition to removing barriers in the lobby area around the ATM.

To avoid the problem of either the bank or the college imposing all obligations for barrier removal on the other party, the college and the bank should allocate responsibilities for barrier removal in their lease agreement. However, the allocation of responsibilities in the lease is only binding as between the bank and the college. If either the bank or the college fails to remove barriers in the areas for which it has assumed responsibility, the other party could be liable for barrier removal or any violations of Title III that occur in that area.

Example 2

A public community college leases its cafeteria facilities to a food service company. The college has an obligation to make all services to students accessible under Title II. In addition, the college is obligated under Title II not to enter into a contract with a food service company that would discriminate against students on the basis of a disability. In other words, the college may not insulate itself from liability for a program that discriminates against persons with disabilities by contracting out these services to an independent agency. The college might be liable under Title II for any discriminatory practices engaged in by the food service company, as well as any other barriers to access created by the food service company. The food service company would be liable under Title III as a public accommodation.

mple 3

If a private college or a private, non-profit foundation owns a place of public accommodation, such as a restaurant or a hotel, but leases it to a management company for its day-to-day operation, both the college foundation and the management company are liable for any discriminatory practices and procedures of the management company or for any barriers that may exist in that area.

If a public college owns the restaurant or hotel, the tenant is still liable under Title III; it is unclear whether the public entity has any responsibilities. The college or university has no Title III obligation to engage in barrier removal or to provide assistive aids and devices to persons with disabilities who use that building because it is public. The public college may have Title II obligations if the facility exists to provide services to students (e.g., a college's obligations for an on-campus hotel may be greater than for an off-campus commercial facility). Plaintiffs may argue that the college or university has an obligation under Title II to provide access to that tenant's space in all cases, contending that leasing space is considered a program or service of the college.

Many colleges and universities fail to realize that if they are affiliated with a private, non-profit foundation, that private entity may have obligations under Title III as a commercial landlord, even if the foundation has acquired the commercial property through a gift and is renting that space to businesses.

Colleges as Tenants

Public colleges that lease space in off-campus buildings for their programs, activities, or services have a number of obligations under Title II. Public institutions are required to choose facilities that are as accessible as possible when they perform their site selection. In addition, a public college or university has an obligation under program access requirements to make that space functionally accessible after it is leased. These requirements apply even when the college is leasing space off-campus for one day or night to conduct functions such as seminars, formal dances, or receptions for trustees. Private institutions have similar obligations under Title III.

In light of a college's broad exposure to liability in leasing space to or from another entity, the ADA Task Force should perform an audit of all of the college's leased programs and services. The task force should also ascertain the extent to which individual departments, organizations, and private foundations control or own space that they might lease or have the authority to lease space for their own programs, services, or activities.

SAMPLE AUDIT OF LANDLORD AND TENANT ISSUES

Facilities Leased by the College (Public or Private)

	Yes	No
1. Does the facilities survey in Chapter 8.4 cover all facilities leased by the college or university for any programs or services, including:		
(a) Office space leased for employees	___	___
(b) Other buildings leased for the institution's employees	___	___
(c) Locations used for off-campus courses	___	___
(d) Offices used for extension departments or off-campus programs	___	___

		Yes	No
(e)	All agricultural or similar extension locations	___	___
(f)	Off-campus research facilities	___	___
(g)	Each classroom facility, courthouse, hall, or other space in which off-campus courses are located	___	___
(h)	Every campus of a multi-campus school or system	___	___
(i)	Housing owned or operated by the institution off of the main campus	___	___

[If not, the survey in Chapter 8.4 and the program audits in Chapters 7.2 through 7.5 should cover all those locations.]

2. For each of the off-campus spaces identified at which the institution offers programs or services, answer the following questions:

			Yes	No
(a)	Is the space partially accessible to persons with disabilities?		___	___
(b)	Does the lease provide that the landlord will ensure that entrances and common areas are accessible, as well as access to the location in which the institution's programs operate?		___	___
(c)	Does the landlord impose any discriminatory criteria on persons with disabilities?		___	___
(d)	Does the lease contain provisions governing provision of auxiliary aids and services in common areas?		___	___
(e)	Does the lease require that the location be functionally accessible to persons with disabilities, i.e.,			
	(1)	Accessible parking	___	___
	(2)	Ramps or level entrances	___	___
	(3)	Elevators to spaces above or below ground level	___	___
	(4)	Accessible signage	___	___
	(5)	Accessible bathrooms	___	___
	(6)	Accessible doors	___	___

		Yes	No
Vendors Leasing Space on Campus (See also Chapter 7.5)			
3.	Has the institution identified all vendors providing services to students using facilities of the institution?	___	___
4.	For each such vendor identified in response to question 3, answer the following questions:		
(a)	Has the institution advised the vendor of its obligations under the ADA, especially Title III?	___	___
(b)	Has the vendor agreed not to engage in discrimination against persons with disabilities?	___	___
(c)	Is the vendor aware of its obligation to provide auxiliary aids and services?	___	___
(d)	Is the vendor taking steps to remove barriers where it is readily achievable to do so, where this is relevant?	___	___
(e)	Has the lease between the institution and the vendor been modified to reflect the vendor's ADA obligations?	___	___
5.	Do all bids for on-campus services for private entities require compliance with Title III as a condition of the bid?	___	___
6.	[Optional] Are all vendors required to comply with the requirements of Title I as a condition of any contract?	___	___
Private Foundations and Trusts			
7.	Has the development office/public affairs office or other relevant office identified all foundations, trusts, and endowments that include facilities or commercial property or that own, lease, lease to, or operate facilities or commercial property?	___	___
8.	Has the relevant department identified all such facilities that may be places of public accommodation?	___	___
9.	For each place of public accommodation noted above, answer the following questions:		
(a)	Has the institution advised the operator or manager of its obligations under the ADA, especially Title III?	___	___

		Yes	No
(b)	Has the operator or manager agreed not to engage in discrimination against persons with disabilities?	___	___
(c)	Is the operator or manager aware of its obligation to provide auxiliary aids and services?	___	___
(d)	Is the operator or manager taking steps to remove barriers where it is readily achievable to do so, where this is relevant?	___	___
(e)	Has the lease between the institution and the operator or manager been modified to reflect the operator or manager's ADA obligations?	___	___

Other Entities Leasing or Using Space on Campus

		Yes	No
10.	Have all agreements governing use or lease of space at the institution's facilities been amended to identify the ADA obligations of persons using or leasing space on a campus, including meeting space, performing arts, athletic events, and other programs open to the public?	___	___

Date:__________________________ Form No. 7.7.1

GENERAL ACTION FORM

Background Information

1. Name and title of individual completing form:

____

____

2. Name of department audited:

____

____

3. Name of program or service audited (if different):

____

____

4. Procedures followed [include names & titles of individuals consulted and materials reviewed]:

____

____

____

Potential Problems or Areas of Possible Non-Compliance:

(Complete a separate form for all problem areas, or use additional pages if necessary)

5. Potential problems identified during audit:

____

____

____

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Recommended Action

6. Action or steps recommended:

7. Proposed method(s) to implement recommendations:

8. Would implementation of the recommendations be a fundamental modification or alteration of the program, or pose an undue hardship?

9. Timetable:

10. Factors that may affect implementation of recommendations:

11. Suggested procedures to ensure that recommendations are followed:

12. Estimated cost (if any):

For questions regarding this form or ADA compliance, contact:

at

Attach any relevant background information to this form.

FOR ADA TASK FORCE USE ONLY

Individual(s) Analyzing Form [include title] ________________________________

____

Date Reviewed ____

	Yes	No
Are any of the issues identified problems under the ADA?	___	___
Are the recommendations the most cost-effectivemethod of achieving ADA compliance?	___	___

If no, describe what alternate solutions will be used to solve any ADA problems.

____

____

CHECKLIST FOR COMPLIANCE

1. Person assigned to implement solution: ______________________________

   Telephone Number: ____
2. Deadline for completion: ____
3. Resources (if any) needed: ______________________________________
4. Date resources provided: _______________________________________
5. Task force member assigned to monitor compliance [include title]:

   ____
6. Date(s) of follow-up: ____
7. Solution implemented: ____
8. Date compliance achieved: ______________________________________
9. Cost (if any) of compliance efforts (include estimated staff time and actual expenditures):

   ____

   ____

Date: ______________________________ Form No. 7.7.2

SELF-EVALUATION FORM FOR CLUBS AND ORGANIZATIONS

Background Information

1. Name of club or organization audited:

____

2. Name and title of individual completing form:

____

3. Nature of club or organization (e.g., engineering club):

____

4. Names and titles of club/organization members interviewed during audit:

____

5. Procedures followed (including all materials reviewed):

____

Membership Practices

	Yes	No
6. Does the organization deny membership to individuals with disabilities because of their disabilities?	___	___
7. Have all individuals involved in the selection of new members been advised that they should not discriminate in admission on the basis of disability to qualified individuals with disabilities?	___	___

Auxiliary Aids and Services

8. Are auxiliary aids and services provided to members or potential members of the club or organization to enable participation in all activities?	___	___
9. Does the organization make auxiliary aids and services available to individuals (regardless of their membership) to attend events sponsored by the organizations?	___	___

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Public Events	Yes	No
10. Are all activities of the organization, whether for members of others, scheduled at accessible locations or rescheduled if necessary to accommodate individuals with mobility impairments?	___	___
11. Do all communications, publishing and advertising of events of the club or organization include notations that the event will be made accessible to persons with disabilities and auxiliary aids and services will be provided upon request?	___	___

12. What source(s) of dunding will be used to provide accessibility and auxiliary aids and services?

____

____

13. What is the name and title of the individual in the club or organization who should be contacted regarding procedures for ADA compliance?

____

____

Recommended Action

14. If the answer to any of theforegoing questions is "no," please identify and describe any potential problems.

____

____

15. Action or steps recommended:

____

____

16. Proposed method(s) to implement recommendations:

____

____

17. Timetables:

____

18. Factors that may affect implementation of recommendation:

____

____

19. Suggested procedures to ensure that recommendations are followed:

____

____

20. Estimated cost (if any):

____

____

For questions regarding this form or ADA compliance, contact:

____

at

____

Attach any relevant background information to this form.

FOR ADA TASK FORCE USE ONLY

Individual(s) Analyzing Form [include title] ______________________________

____

Date Reviewed ______________________________

	Yes	No
Are any of the issues identified problems under the ADA?	___	___
Are the recommendations the most cost-effective method of achieving ADA compliance?	___	___

If no, describe what alternative solution(s) will be used to solve any ADA problems.

CHECKLIST FOR COMPLIANCE

1. Person assigned to implement solution: ______________________________

   Telephone number: ______________________________

2. Deadline for completion: ______________________________
3. Resources (if any) needed: ______________________________
4. Date resources provided: ______________________________
5. Task Force member assigned to monitor compliance [include title]: ______________

   ____

6. Date(s) of follow-up: ______________________________
7. Solution implemented: ______________________________
8. Date compliance achieved: ______________________________
9. Cost (if any) of compliance efforts (include estimated staff time and actual expenditures):

   ____

   ____

   ____

CHAPTER 8

AUDITING FACILITIES

During Phase I of the self-evaluation process, an institution must audit the accessibility of the programs that it offers to the public and the facilities where it offers or plans to offer those programs. A facilities "audit" or survey of the degree of accessibility of existing buildings will identify buildings or spaces that pose structural barriers to access—information that is important for Phase II of the self-evaluation and development of the transition plan. If a program is offered in an inaccessible building, the institution may choose to provide access by moving the program to another location or by removing structural barriers to access.

Both Title II of the ADA and Section 504 of the Rehabilitation Act have different requirements for the accessibility of existing facilities than they have for new construction and alterations projects. Public entities are not required to make each of their existing facilities accessible. However, when a public institution does build a new building or alter an existing one, that construction must be done in accordance with an accessible design standard.

This chapter introduces a number of building codes and concepts related to evaluating the accessibility of a building or facility. Chapter 8.1 provides an introduction to the building codes that those who conduct the facilities audit should be familiar with and explains the relationship of each one to the building's level of accessibility. Chapter 8.2 explains the difference between facilities surveys and consultants who evaluate the accessibility of buildings against a specific code, or for barrier removal under Title III, and the more in-depth and comprehensive evaluations of programs and facilities of a public institution for compliance with Title II. Issues that should be addressed regarding each new construction and alterations project are addressed in Chapter 8.3. The most in-depth discussion, Chapter 8.4, is a sample facilities audit/survey that should be completed for each existing facility owned by the institution or leased by or from the institution.

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8.1 OVERVIEW OF RELEVANT BUILDING CODES

Whether a building on the campus of a community college or four-year college should have been built in compliance with one or more building codes requiring various levels of accessibility depends on when the building was built and how it was financed. In conducting a facilities audit, institutions should identify what accessibility codes, if any, applied to the building when it was altered or constructed. This information will help the institution to gauge how close elements and spaces in a particular building are to compliance with the ADA Accessibility Guidelines (ADAAG), identify what areas, if any, pose structural barriers to program access, and determine whether the facility was built in violation of Section 504 or another law.

The Architectural Barriers Act of 1968

Since 1969, new construction or alterations projects that were financed with federal funds or with a grant from the federal government have been subject to federal laws requiring compliance with an accessibility standard. The Architectural Barriers Act (ABA) was passed in 1968 to afford persons with disabilities greater access to U.S. government buildings and facilities. Originally, the ABA required compliance with the American National Standards Institute A117.1 Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI A117.1). The ABA adopted the ANSI A117.1 standard from September 1969 to October 13, 1980. Between October 14, 1980 and July 31, 1984, the ABA required compliance with a variation of the ANSI standard, which was developed by the Government Services Administration. The ABA requires that all buildings that are designed, constructed, or altered with federal funds after August 1, 1984 comply with the Uniform Federal Accessibility Standards (UFAS), which was, at one point, the model for all building and alterations done by federal government agencies. In one way or another, the ANSI standard has served as the basis for both UFAS and ADAAG.

The Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act required that all buildings that were built or altered by a recipient of federal funds after June 3, 1977 comply with ANSI A117.1. Because coverage under the Rehabilitation Act hinges on the receipt of federal funds, there is some overlap between Section 504's standards for new construction and alterations, and the ABA's standards. Between June 3, 1977 and July 31, 1984, both Section 504 and the ABA required compliance with the ANSI A117.1 standard. After August 1, 1984, the ABA required compliance with UFAS, while the DOEd required ANSI. After January 18, 1991, the Office of Civil Rights of the Department of Education (DOEd) adopted UFAS as the applicable standard for compliance with Section 504.

Before 1988, if an institution with some programs that received some sort of federal funds built a building on its campus without using any of those funds for the design, construction, or alteration of that facility, some questions arise regarding whether or not that particular project was subject to Section 504's new construction and alterations requirements. Especially after *Grove City College v. Bell*, institutions whose programs received federal funds had a strong argument that a new building or alteration project was not subject to either the ABA or Section

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504 if no federal money was used for the building or for the programs that occupied the building. However, the Office of Civil Rights of the U.S. Department of Education has informally taken the position that every new construction or alteration project since June 3, 1977, at an institution that received any type of federal assistance, was subject to Section 504 and required to comply with ANSI A117.1.

After the Civil Rights Restoration Act became effective in 1988, all new construction and alterations projects at institutions whose programs received at least $1 of federal funds were required to comply with ANSI A117.1 standard. Effective January 18, 1991, DOEd finally adopted UFAS as the standard for compliance with Section 504's new construction and alterations requirements. It is the rare postsecondary institution that has not been required to follow ANSI or UFAS since 1988 or earlier when the institution used federal grants for capital improvements.

The ADA

Since Title II of the ADA became effective on January 26, 1992, all new construction and alterations projects of public entities that had previously been covered by Section 504 and/or the ABA are also subject to Title II. Title II permits public institutions that build or alter buildings after January 26, 1992 to choose between complying with either the ADAAG or UFAS. If an institution adopts the ADAAG as the standard for a particular building, the DOJ regulations state that the building will not qualify for the ADAAG's "elevator exemption" for buildings with less than 3 floors or 3,000 square feet of floor space per floor. Thus, every public building of more than one level built after January 26, 1992 must have an elevator. While Title III's requirements for new construction do not apply to buildings occupied before January 26, 1993, virtually all private postsecondary capital improvements are already covered by Section 504.

Code Compliance and Program Access

Although the differences in the accessibility standards adopted by the ABA, the Rehabilitation Act, and the ADA are not dramatic, the differences may be significant to colleges and universities when they audit their facilities' compliance with Title II's program access requirement. When a college or university audits a facility and discovers elements or spaces that do not comply with the ADAAG, it should then determine whether the space or physical element is truly a barrier to program access in that building. If the building complied with an accessibility code at the time it was constructed or altered, then a good argument can be made that elements and spaces not complying with the ADAAG will not pose a barrier. Compliance with UFAS or ANSI A117.1 is similar enough to compliance with the ADAAG that compliance with either of those two codes will rarely present structural barriers to program access. If the audit reveals that a particular building was constructed or altered without regard for either UFAS or ANSI A117.1, when it was required to meet those codes, then the elements and spaces of that building should receive immediate priority in the self-evaluation and in the transition plan for structural changes.

The following chart summarizes the relevant laws and building codes adopted by those laws, according to date of construction and type of financing, for new construction and alterations projects:

APPLICABILITY OF BUILDING CODES UNDER FEDERAL ACCESS LAWS

Buildings constructed or altered September 2, 1969 - June 3, 1977

> With federal funds or with a grant from federal government.	Subject to the ABA Comply with ANSI A117.1 1969 (R 1971).
> Without federal funds.	Must comply with relevant state accessibility code, if any

Buildings constructed or altered June 3, 1977 - March 1988

> With federal funds or with a grant from federal government.	Subject to ABA and 504 of the Rehab Act. Comply with ANSI A117.1 1969 (R 1971) from 1977-1984, and with the more stringent standard in either ANSI A117.1 or UFAS from 1984-1988.
> Built by a specific "program" that receives federal funds, but federal funds were not used in the design, construction, or alteration of the building	Subject to 504 of the Rehab Act: an argument exists for requiring compliance because facility was built by, on behalf of, or for the use of a recipient of federal funds. Comply with ANSI A117.1 1969 (R 1971).
> Built by college or university that uses or receives federal funds for capital improvement, but federal funds were not used for this building.	Probably subject to 504 of the Rehab Act if "capital improvements" is a separate program or each construction project is a separate program. See *Grove City*. Comply with ANSI A117.1 1969 (R 1971).
> Some programs of college or university receive federal funds; none of that money was used for the building, for any building, or for the programs that will use the new building.	Not subject to 504 of the Rehab Act, according to *Grove City;* however, if the Office of Civil Rights were to conduct an audit of the facility, it would maintain, under DOEd regulations, that any receipt of funds subjects all new construction to regulation under 504. Comply with ANSI A117.1 1969 (R 1971).

Buildings constructed or altered March 1988 - January 26, 1992

> With federal funds or with a grant from the federal government.	Subject to ABA.

	Comply with UFAS.
> Every scenario in the previous section.	Subject to 504 of the Rehab Act—The Civil Rights Restoration Act of 1987 overturned *Grove City* and subjected all programs of a college or university that receives even $1 of federal financial assistance (including federally guaranteed loans to students) to the accessibility requirements of 504 of the Rehab Act.
	Comply with ANSI A117.1 1981 until January 18, 1991; after that date, comply with UFAS.

Buildings constructed or altered after January 26, 1992

> Built by, on behalf of, or for the use of a public entity.	Subject to 504 of the Rehab Act.
	Comply with UFAS.
	Subject to Title II of the ADA.
	Comply with ADAAG or UFAS.
> Built by a private college or university.	Subject to Section 504, if the school receives even $1 in federal funds.
	Comply with UFAS.
	All alterations are subject to Title III of ADA; comply with ADAAG.
	If final building permit is issued for new building after January 26, 1992, and final certificate of occupancy after January 26, 1992, subject to Title III of the ADA; comply with ADAAG.

8.2 USING OTHER FACILITIES AUDITS AND CONSULTANTS

Many outside consultants and organizations have prepared extensive "audits," checklists, or surveys intended to address Title III compliance issues. There are four major problems with many of these "audits:"

- In most cases these "audits" focus only on architectural barriers at a particular site

- Some Title III facilities surveys erroneously focus only on physical barriers and ignore the ADA requirements for removal of communication barriers

- The Title II program access provisions address not only the structural elements of buildings and facilities, which are the focus of evaluations of Title III compliance, but also focus on the overall accessibility of programs, services, and activities offered by a public institution of higher education

- Many audits focus on the requirements of the ADA's new construction and alteration provisions, rather than the less stringent requirement of "program access"

These surveys and advice are not without benefits. A number of architects, building designers, and other groups have published guidance for evaluating ADA compliance, especially the requirements for new construction and alterations. Several good publications are listed in Chapter 2.4. Major associations of architects and builders have published checklists derived from the ADAAG, which make these requirements somewhat easier to follow. Architects familiar with accessible design can offer a special technical expertise in reviewing facilities for compliance and ensuring that renovation projects comply with the ADAAG or UFAS. A facilities "audit" or survey is a useful guide during Phase I and can be invaluable in overseeing new construction, and advice can be helpful during Phase III. However, all institututions must avoid two mistakes:

- Confusing a facilities audit with a comprehensive Title II self-evaluation

- Paying for an expensive facilities "audit" that results in recommendations and estimates to bring all buildings up to "code," then accepting that recommendation as necessary under the ADA. It is not. (See Chapter 4.)

Many consultants who conduct an ADA facilities "audit" will merely provide a college or university with an evaluation of the compliance of existing facilities with new construction standards. Most facilities audits have no mechanism for the college to use to gauge whether or not a non-complying structural element in a facility still permits functional access to the programs, services, and activities in that facility or considers operational solutions. Instead, the audit will identify non-complying elements or areas and use the DOJ's list of priorities for removing existing barriers under Title III as a guide to priorities, without any consideration of Title II or program access.

In conducting a self-evaluation/audit of programs, activities, and services under Title II, a public institution must not only identify those elements and spaces that fail to meet either ADAAG or UFAS, but it must also determine whether these differences are actual barriers, analyze what programs and services use buildings that have barriers, and weigh alternative solutions. While most facilities audits can help public institutions to complete Phase I of the Title II self-evaluation procedure, a facilities audit alone does not provide a public college or university with enough information to perform Phase II of its self-evaluation. After a college or university identifies structural barriers in its facilities, it must have access to information about the programs, services, policies, and procedures that affect a particular facility (See Chapter 4). Information about both a facility and the programs that use the facility are necessary for Phase II. Without both pieces of information, the institution will be unable to determine whether it is best to remove the structural barrier or to move or modify the programs, services, policies, or procedures whose accessibility is limited by the facility (See Chapter 4).

Another problem with some facilities-only audits is that they evaluate only compliance with the ADAAG and do not address whether or not an element is compliant with UFAS or earlier ANSI standards. Whether or not an area or element of a facility complies with UFAS is highly relevant to colleges and universities that must evaluate the accessibility of each of their facilities not in absolute terms of compliance with ADAAG, but to determine whether they are providing program access.

For these reasons, all institutions should be cautious when designing surveys, using commercially available surveys, or contracting with consultants, to ensure that the survey will provide the type of information needed in Phase II. Awareness of the program access requirements should prevent a situation where an institution pays for a comprehensive facilities audit by a consultant, only to find that the results are not enough to analyze program access and that more work is needed to conduct a self-evaluation and avoid necessary expenditures on existing facilities.

8.3 SAMPLE AUDIT FOR NEW CONSTRUCTION AND ALTERATION PROJECTS

All new construction or alteration projects by public institutions that were begun after January 26, 1992 must follow the building standards adopted under Title II of the ADA. Title II's requirements apply to projects that were already under design on that date if bids on those projects had not yet been solicited as of January 26, 1992.

Title II requires that the new construction or alteration of facilities by public institutions be readily accessible to and usable by persons with disabilities. "Readily accessible" has been interpreted by the Department of Justice (DOJ) in this context to mean designed, constructed, or altered in strict compliance with an accessible design standard. Under Title II, public institutions may choose between two design standards in the construction or alteration of a building. The two standards are the Uniform Federal Accessibility Standard (UFAS)[1] and the ADA Accessibility Guidelines (ADAAG). Private institutions that are not subject to Section 504 are required by Title III of the ADA to follow the ADAAG in all of their new construction and alterations projects. The DOJ and the DOEd have not yet issued guidance for private institutions subject to both Title III and Section 504. The two codes are available on an interim basis. It is likely that the next several years will see the elimination of UFAS and its more stringent requirements incorporated into an ADAAG-based code for public entities and recipients of federal funds. All physical plant administrators should watch for new developments in this area.

Of the two standards, one is not, generally, more strict than the other, but there are some differences between the two standards. The DOJ's Title II Technical Assistance Manual analyzes some of the differences. Although UFAS includes some standards for special types of facilities, ADAAG is far more comprehensive in its standards for residential facilities, restaurants, and medical or health care facilities. The ADAAG standards for communications, such as the requirements for TDDs, visual alarms, and assistive listening systems, are much more detailed than the communications provisions in UFAS. The application of ADAAG is limited in work areas and requires only that individuals with disabilities be able to approach, enter, and exit those areas. UFAS standards remain the same, even in areas that may result in employment of persons with disabilities. Both the ADAAG and UFAS permit departures from strict compliance with their particular standards in limited circumstances. ADAAG allows departures where alternatives will provide substantially equivalent or greater access. Under the Section 504 regulations, which adopt UFAS, departures are allowed where it is clearly evident that equivalent access is provided.

If a public institution decides to follow the ADAAG in the design and construction of its new facility, the ADAAG "elevator exemption," which applies in new construction under Title III of the ADA, is not available. [Under Title III requirements for private buildings, the elevator exemption permits the omission of elevators in new construction, if a building has less than 3 floors or less than 3,000 square feet on each floor.] Therefore, regardless of whether a public institution follows UFAS or ADAAG, newly constructed buildings with two or more floors must have elevators. Because private colleges must follow UFAS under Section 504, it is possible the DOEd would take the same position the DOJ has taken with public institutions (i.e., the more stringent requirement applies).

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[1] **UFAS is the design standard that is required by the Rehabilitation Act for new construction and alterations.**

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In alterations projects, modifications to certain areas or of a certain magnitude can trigger additional obligations to make an accessible "path of travel" to serve the altered portion of the facility. The additional obligations could include providing accessible telephones, restrooms, and drinking fountains that serve the altered areas. The ADAAG's path of travel requirement is triggered only when a primary function area is altered; UFAS requires a path of travel for any "substantial alteration," where the total cost of all alterations in a 12-month period amounts to 50 percent or more of the value of the building. The ADAAG's path of travel includes an accessible route from the building's entrance to the altered area and accessible telephones, restrooms, and drinking fountains serving the altered area. Under the ADA, the amount of money that a private entity must spend to comply with the ADAAG path of travel requirement is limited to 20 percent of the cost of the original alteration. The regulation and technical assistance under Title II are unclear whether this same limitation applies to public entities. The UFAS path of travel obligation requires an institution to provide an accessible route from public transportation, parking, streets, and sidewalks to all accessible parts of the building, and includes accessible entrances and accessible restrooms.

When planning and budgeting for new construction or alteration projects, public institutions must remember that under the DOJ regulations they must follow the same standard, either UFAS or ADAAG, throughout the facility they are building or altering. All alteration projects in the same building must follow one design standard. Title II does not permit one floor of a newly constructed facility to comply with UFAS if another floor in the same building complies with ADAAG. The same design standard must apply throughout the entire building. For example, renovations in the lobby area of a campus theater cannot adopt UFAS if other renovations in the auditorium followed ADAAG.

The questions in this chapter will help an institution to evaluate its designs for new construction or alteration projects and to ensure that the project complies with either UFAS or ADAAG. The coordinator for each construction or alteration project should obtain answers to all of these questions before authorizing work to begin on a project, or incorporate these inquiries into Requests For Proposals.

Questions for Potential Architects and Design-Build Contractors	Yes	No
Institutions must insist that all architects, designers, and engineers with whom they contract be aware of the requirements of both UFAS and ADAAG, as well as the differences between the two standards.		
1. Are you familiar with the technical specifications of both UFAS and ADAAG?	___	___
2. Have you analyzed the differences between the ADAAG and UFAS?	___	___
3. What projects in the past four years have you designed in accordance with UFAS?		

____

____

____

		Yes	No
4.	Would there be a cost savings in following one standard over the other in a particular new construction project involving specialized areas, such as residential facilities, health or medical care facilities, or restaurants?	___	___
5.	Have all applicable local or state building code provisions been compared to the requirements of either UFAS or ADAAG? If so, what differences have you identified? ______________________________ ______________________________	___	___
6.	Do any of the provisions in the local or state building code have more stringent requirements than those in UFAS or ADAAG? If so, which code is more "accessible"? ______________________________ ______________________________	___	___

[Note: If the local codes have stricter standards for any aspect of design, then they must be complied with in that area.]

		Yes	No
7.	If the building is to be a special-use facility, such as a cafeteria, medical or health care facility, residential facility, or area of assembly (e.g., field house, theater, or stadium), do the plans incorporate the additional requirements that apply specifically to those areas?	___	___

Questions for Campus Facilities/Capital Improvements Administrators

New Construction

		Yes	No
1.	Is the building currently under design?	___	___
2.	If the answer to question 1 is "yes," and construction has not begun, when were bids accepted for the building? ______________________________ ______________________________ ______________________________		
3.	Do the bids for subcontracted work include the cost of all modifications to fixtures and design that were necessary to comply with either the UFAS or ADAAG standard?	___	___
4.	Has the institution anticipated the need for placing curb cuts on sidewalks near the proposed site for the new building?	___	___
5.	In selecting the site for the new building, was consideration given to the need to provide an accessible route, which includes the proper slope and		

Yes No

ground surface, from transportation stops and accessible parking spaces to the building's accessible entrance? — —

Alterations

1. Has the building where an alteration is planned been altered since January 26, 1992? — —

    (a) If the answer to question 1 is "yes," what standard was followed for the previous alteration project?

    ____

    ____

    (b) If the answer to question 1 is "no," then the institution may follow either UFAS or ADAAG in making the planned alterations.

2. Will the alteration be in an area containing a "primary function" of the building (e.g., classrooms of an academic building or the area where books are stored in a library)? — —

    (a) If the answer to question 2 is "yes," is it structurally feasible to follow UFAS for this alteration? — —

    (b) If the answer to question 2 is "no," skip questions 2(c), (d), and (e).

    (c) What is the estimated cost of the alteration?

    ____

    ____

    ____

    (d) If the institution plans to follow ADAAG for this alteration project, what is the estimated cost of creating an accessible route and making the restrooms, telephones, and drinking fountains that serve the altered area accessible?

    ____

    ____

    ____

    ____

    (e) Does the total estimated cost of creating an accessible path of travel exceed 20 percent of the total estimated cost of the alteration in question 3(b)? — —

Yes No

A path of travel obligation is also included in the alterations provisions of UFAS. Under UFAS, if the estimated cost of an alteration is more than 50 percent of the value of the building, the project must also include the following:

- An accessible route from the nearest transportation stop, parking, street, and sidewalk to all parts of the building that are or will be accessible
- An accessible entrance
- Accessible restrooms in the altered area

The path of travel obligation under UFAS is subject to a cost limitation of 15 percent of the cost of alteration as planned. The DOJ's interpretation of path of travel obligations for public institutions in the Title II Technical Assistance, however, seems to recognize only the ADAAG's 20 percent limitation on the path of travel and the ADAAG's requirements for what path of travel obligations entail. This remains an open question.

Questions for the Finance Administrator

1. Is the design and construction or alteration of this building financed directly with federal funds or a grant from the federal government? ___ ___

   (a) If the answer to question 1 is "no," go on to the next question.

   (b) If the answer to question 1 is "yes," the institution will have additional obligations under the Architectural Barriers Act and should review the applicable standard under that law. (See Chapter 8.1).

2. If the building is being financed solely through a private grant, does any part of the institution receive federal, state, or local financial support? If so, comply with ADAAG and Section 504. ___ ___

Questions for Physical Plant/Legal Counsel for Contracts

Questions for the RFP

1. Identify the firm's experience with accessible design.
2. Identify the firm's experience with incorporating accessible design into historic properties or blending accessible design into the institution's architectural scheme.

Yes No

3. Identify all individuals in the firm with expertise or significant experience with barrier-free design, the UFAS, ADAAG, or equivalent state codes, and explain the nature of that experience and their role on this project.

4. Identify all projects in the past four years designed by the principals to be assigned to the project that followed UFAS and/or MGRAD.

5. Note that experience with barrier-free design will be weighed in the final decision.

Contract Issues

Does each contract with architects, contractors, subcontractors, design-build firms, and other construction professionals include clauses on the following:

1. That the building will be designed and built in compliance with UFAS and/or ADAAG, with the choice made by the institution in consultation with the architect in addition to all applicable codes. ___ ___

2. That all elements (e.g., elevators, visual alarms) will comply with UFAS and/or ADAAG, as appropriate, as well as all applicable codes, and that the contractor will ensure that subcontracts contain the same provisions. ___ ___

3. A warranty that the building is designed/built in compliance with UFAS/ADAAG, with the same indemnification and liability provisions that apply if the design/construction is built in violation of a building code or fire code. ___ ___

4. Has the institution added a provision stating that if the institution is challenged by an individual, the DOJ, the DOEd, DHHS, or other agency under the ADA in any proceeding, due to the alleged failure of the architect/contractor to follow ADAAG/UFAS, the architect/contractor will provide assistance in the defense without charge, and if the institution is found liable or settles due to an act or omission of the professional, the professional will indemnify the institution for the costs of correction, fines, damages, and its attorneys' fees? ___ ___

Physical Plant Policies and Procedures

1. Is there at least one person within the institution who is familiar with ADAAG and UFAS? ___ ___

2. Does the physical plant department have copies of the:

		Yes	No
(a)	ADAAG and commentary on the regulations	___	___
(b)	Title II and/or III regulations	___	___
(c)	Title II and/or III Technical Assistance	___	___
(d)	UFAS	___	___
3.	Are there procedures in place for evaluating access and compliance with ADAAG/UFAS during:		
(a)	Site selection	___	___
(b)	The RFP process	___	___
(c)	Review of specifications and bids	___	___
(d)	Plans	___	___
(e)	Change orders	___	___
(f)	Walk-throughs	___	___

8.4 SAMPLE AUDIT OF EXISTING FACILITIES

Title II and Section 504 require institutions to ensure that all of their programs are accessible when viewed in their entirety. Private institutions have an additional obligation under Title III to remove barriers in all facilities where it is readily achievable to do so. Although structural changes are an option for providing program accessibility, a public institution or 504-covered institution is not required to make structural changes if other methods, such as redesigning equipment, moving programs to accessible buildings, or assigning aids or assistive devices to persons with disabilities, are effective in providing program accessibility.

In Phase I of the self-evaluation, institutions should use a facilities survey to identify any major physical and structural communications barriers that exist in facilities used for programs and services, including employment[1] (See Chapter 3.5). In Phase II, the ADA Task Force combines information from the facilities survey with information from the audit of programs and services to determine the best method for providing access to all of its programs and services (See Chapter 4.2). If the only method of achieving program accessibility is through structural changes, public institutions must include those changes on a "transition plan" (See Chapter 4).

Caveats

The sample audit/survey of facilities in this chapter does not analyze every item or element that is covered in the ADAAG and UFAS because this workbook and manual is not designed to compete with the more comprehensive materials on facilities design available from architects, builders, and facilities administrators.

Because of the wide differences among institutions, the questions track the approach taken in the ADAAG and UFAS (e.g., by element with some specific questions for special spaces). Each facility should be analyzed for each of the elements on this master list.

The questions have been designed so that a survey can be conducted of each space/facility. We believe it is important that facilities be viewed as a whole. This format is simply one of many that we have seen. Institutions should devise other formats if they can better meet their needs (e.g., if the survey results will be computerized).

Instructions

The audit questions are designed to first determine whether or not a particular space or element complies with ADAAG. If the space or element does not comply with the ADAAG standard, the questions that follow attempt to determine whether the element or space complies with UFAS or ANSI, where those standards are different from the ADAAG. Questions are included that attempt to gauge the amount by which the space or element varies from the ADAAG/UFAS/ANSI standard. If the degree of variance is not significant, it is unlikely that the element poses a barrier or that structural changes will be necessary (See Chapter 4.1). The determination of whether an element poses a barrier is part of Phase II.

---

[1] If this first stage is limited to a review of architectural features and the extent that they vary from the ADAAG or UFAS, it is probably more accurate to call it a facilities survey. If an attempt is made to identify functional barriers, it is more of an "audit." We have used the two terms interchangeably. As noted above, neither approach is an ADA "audit," it is merely one component of a program access self-evaluation.

A facilities audit should be of all existing buildings owned or leased by the institution in which programs and services are offered directly or under a lease. (See Chapter 7.6 for a discussion of the public institution's obligations as a landlord and as a tenant.) The audit questions focus first on the level of program accessibility that one general area, such as the accessible route or parking lot, affords the programs in a particular building. The program accessibility questions are at the beginning of the questions for each area to focus the subsequent evaluation of the components and elements that make up that area, such as appropriate signage, proper slope, or surfaces. Next the audit asks questions regarding the accessibility/compliance of the components and elements of each area. These questions should be answered before a final evaluation of the level of program access is made. If an element or component does not meet any of the standards, there is a place for evaluating the degree of variance and a code system for rating the level of program accessibility that each area affords to the building in light of, among other factors, the relative compliance of its component elements. These rating codes require a degree of judgment, but should aid the Phase II analysis. The following are the rating codes we recommend:

0 = Each component or element complies with ADAAG.

Conditions are optimal for program accessibility with respect to this area of the building, and all elements and components in the area are in compliance with ADAAG or UFAS.

1 = A component or an element almost complies with ADAAG or UFAS specifications, and does comply with ANSI.

Conditions are favorable for program access with respect to this area of the building, and most components or elements in the general area are ADAAG-compliant, and all are at least UFAS- or ANSI-compliant.

2 = A component or an element does not comply with ADAAG, UFAS, or ANSI, but the variance is not significant (e.g., handrails one inch off, counters one inch too high); at most a minor inconvenience.

Conditions do not encourage program access, but do not prevent it, even though some elements or components in the area do not comply with ADAAG, UFAS, or ANSI. There are no barriers.

3 = A component or an element varies moderately from compliance with ADAAG, UFAS, and ANSI. The degree of variance could be a major inconvenience to most persons with disabilities, and a barrier to some.

Conditions might require some changes in policies or procedures for some individuals, or minor renovations to accomplish program access. Overall, the building still affords program access. A number of elements do not comply with ADAAG/UFAS or ANSI in this area.

4 = A component or an element varies significantly from the requirements of ADAAG, UFAS, and ANSI and poses a barrier to access of that element/area (e.g., ramps are non-existent or too steep to use, no accessible restrooms).

Conditions in this area of the building pose barriers to program access, and elements and components must be structurally changed to make them accessible if there are no operational alternatives. Most elements and components in this area of the building vary significantly from ADAAG, UFAS, and ANSI specifications.

5 = The degree of variance of an element or space presents a life-safety issue that must be corrected immediately (e.g., curb ramps leading into traffic that are so steep they pose a danger, protruding objects along accessible routes that cannot be detected by cane users).

SAMPLE AUDIT OF EXISTING FACILITIES

Building Name ____________________

Address/Number (if any) ____________________

Person(s) Conducting Survey ____________________

____

____

Date Surveyed ____________________

Other adjoining spaces/facilities (if any) part of this survey ____________________

____

[Attach campus map and show the spaces, routes, parking lots, and facilities covered by this survey.]

General Information

1. What year did construction begin on the building? ____________________

2. Was the building designed, constructed, or altered with federal funds after 1969?
Yes No Unknown

3. Did any of the programs offered in the building receive federal funds between 1973 and 1988?
Yes No Unknown

4. If construction began after June 3, 1977, were bids on the project received before that date?
Yes No Unknown

5. Have there been any alterations of the building since it was built?
Yes No

6. What federal building code, if any, applied to the facility at the time it was built or altered? (See Chapter 8.1.) (circle appropriate standard)

ANSI 1971 ANSI 1980 ANSI 1986 UFAS None Unknown

7. Identify all programs, services, and activities that are offered in this facility. [If unable to determine, attach directory of departments or programs with offices.]

____

____

8. Does this facility house any special applications (e.g., restaurants, cafeterias, dining areas, libraries, or dorms)? (See the questions 269-290 regarding special applications.)
Yes No

9. Do the blueprints or contracts for this facility indicate that they were or were intended to be designed in compliance with UFAS, ADAAG, or ANSI A117.1?
Yes No

(a) If the answer to question 9 is "yes," and the building was intended to be or was designed in compliance with UFAS, then spot-check compliance with UFAS in a number of randomly selected areas to ensure compliance in construction. No further audit of this facility is necessary.

(b) If the answer to question 9 is "yes," and the building was designed in compliance with ADAAG, then spot-check compliance with ADAAG in a number of randomly selected areas to ensure compliance in construction. No further audit of this facility is necessary.

(c) If the answer to question 9 is "yes" and the building was intended to be or was designed in compliance with ANSI A117.1, use the survey to ensure compliance in construction and evaluate the degree of variance from ADAAG/UFAS.

Exterior Areas

Accessible Route

[For the definition of an accessible route, see questions 15-23 and ADAAG Section 4.3.]

10. Is there an accessible route from public or campus transportation stops

Yes No

to an accessible entrance to the building, as required by ADAAG/UFAS? ___ ___

11. Is there an accessible route from public streets or sidewalks to an accessible entrance to the building, as required by ADAAG/UFAS? ___ ___

12. If the answer to questions 10 and 11 is "yes," identify the route on a campus map.

    If the answer to questions 10 and 11 is "no," and there is no single accessible route, identify on a campus map the most direct route that has the least number of barriers.

13. Does the route generally coincide with the route used by the general public, as required by ADAAG/UFAS? ___ ___

14. If the answer to question 13 is "no," describe how far the accessible route is from the route used by the general public.

Definition of Accessible Route

15. For each accessible route marked, answer the following questions regarding ADAAG/UFAS requirements for accessible routes:

    (a) Where changes in level along the route are more than ½", is there a ramp? ___ ___

    (b) Is the running slope along the route no greater than 1:20? ___ ___

    (c) Is the cross slope along the route no greater than 1:50? ___ ___

    (d) Is the route stable, firm, and slip-resistant? ___ ___

    (e) If the route crosses a grating, are the spaces between the grates no greater than ½", with all of the grates going in one direction and the elongated openings positioned to have the long dimension perpendicular to the dominant direction of travel? ___ ___

    (f) Is the route at least 36" wide, with 60" x 60" passing space at least every 200'? ___ ___

16. Is a curb ramp provided at each point where the route crosses a curb, as required by ADAAG/UFAS and ANSI? ___ ___

Yes No

(a) Does each curb ramp meet the requirements of questions 18-23? ___ ___

(b) Mark all places where the accessible route crosses a curb.

[If the audit of the accessible route reveals a non-compliant curb ramp or the lack of a curb ramp anywhere that the accessible route crosses a curb, this is a major life/safety hazard and must be corrected immediately.]

17. If the answer to any of the subparts of question 15 was "no," is the route relatively free from barriers? ___ ___

(a) Does the route have ramps and curb cuts at all locations where the changes in level require them? ___ ___

(b) Is the route free of gravel or dirt? ___ ___

(c) Are the changes in slope or grade on the route only minor? ___ ___

(d) Are there any cracks along the route that exceed allowable limits for changes in level? ___ ___

Specifications for Curb Ramps

Analyze each curb ramp using the following definitions:

18. Does the curb ramp comply with the following specifications for slope required by ADAAG/UFAS: 1:12 with a maximum rise of 30"; 1:10-1:12 with a maximum rise of 6"; 1:8-1:10 with a maximum rise of 3"; and no slope greater than 1:8? ___ ___

19. Is the curb ramp at least 36" wide, exclusive of its flared sides, as required by ADAAG/UFAS and ANSI? ___ ___

20. Is the surface of the curb ramp stable, firm, and slip-resistant, as required by ADAAG/UFAS and ANSI? ___ ___

21. If the curb ramp is located where pedestrians walk across the ramp, is it protected by handrails, guardrails, or flared sides, as required by ADAAG/UFAS? ___ ___

22. Is the curb ramp protected or located to prevent obstruction by parked vehicles, as required by ADAAG/UFAS and ANSI? ___ ___

23. Where a raised traffic island is in the middle of a street, is the island cut

Yes No

through level with the street, or does it have curb ramps on each side with a 48" level area on the island between the curb ramps? ___ ___

If a curb ramp is not accessible according to the ADAAG/UFAS criteria in questions 18-23, mark inaccessible curb ramps on the campus map and describe why each ramp that has been marked does not comply with ADAAG/UFAS.

____

____

Summary/Analysis of Accessible Routes

24. Is the route in questions 10 and 11 accessible to the extent that it complies with the specifications in questions 15-23? ___ ___

25. Based on the answers in questions 15-23, describe any non-compliant elements along the accessible route.

____

____

26. Rate the accessibility of each element along the accessible route (using the scale at the beginning of the audit).

0 1 2 3 4 5 slopes

0 1 2 3 4 5 width/surface

0 1 2 3 4 5 curb ramp(s)

0 1 2 3 4 5 ______________

27. Based on the answers to questions 10-26, rate the level of program accessibility that the exterior route affords to the programs offered in the building.

0 1 2 3 4 5

Parking Areas

[See questions 38-45 for the dimensions of accessible parking.]

28. Does the parking lot that is adjacent to or closest to the building have the minimum number of accessible spaces in accordance with the following ADAAG/UFAS and ANSI schedule:

a) 1-25:1; b) 26-50:2;

Yes No

c) 51-75:3; d) 76-100:4;
e) 101-150:5; f) 151-200:6;
g) 201-300:7; h) 301-400:8;
i) 401-500:9; j) 501-1000:2% of total;
k) greater than 1000:20, plus 1 for every 100 over 1000? — —

29. If the lot serving the building or facility does not have the minimum number of spaces, have an equivalent number of accessible spaces been distributed among other parking lots to achieve greater accessibility, in terms of distance from an accessible entrance, cost, and convenience, as permitted by ADAAG/UFAS? — —

30. If the answers to questions 28-29 are "no":

(a) How many spaces are in the lot?________________

(b) How many accessible spaces are in the lot?__________

(c) Have there ever been complaints about a shortage of accessible spaces in this lot? — —

(d) Are there programs in the building that may result in a higher than "average" percentage of persons with disabilities using the facility (e.g., medical facilities, ADA Task Force meetings)? — —

31. Does the parking lot have the minimum number of van-accessible spaces in accordance with the following ADAAG schedule: 1 van space for every 8 accessible car spaces, but not less than one van-accessible space? — —

32. If the answer to question 31 is "no," is there at least one van-accessible space located reasonably close to an accessible entrance to a building and along an accessible route? — —

33. In a parking lot that serves the building, are the accessible parking spaces located on the shortest accessible route of travel to an accessible entrance as required by ADAAG? — —

34. If the answer to question 33 is "no," are the accessible parking spaces located as close to the building as possible and on an accessible route to an accessible entrance of the building, as specified by UFAS? — —

35. If the building has multiple accessible entrances with adjacent parking, are accessible parking spaces in the lot that serves the building dispersed throughout the lot to be located closest to the accessible entrances as

		Yes	No
	required by ADAAG?	—	—
36.	If the answer to question 35 is "no," are the accessible spaces located on an accessible route to the accessible entrances?	—	—
37.	If there is no parking lot adjacent to the building, is there a parking facility nearby where, as required by ADAAG/UFAS, accessible parking is dispersed and located on the shortest accessible route to the accessible pedestrian entrances to that facility?	—	—

Specifications for Accessible Parking Spaces

		Yes	No
38.	Are the car spaces accessible as required by ADAAG/UFAS and ANSI (i.e., at least 96" wide, with an access aisle of at least 60" wide)?	—	—
39.	Do van-accessible spaces meet the following ADAAG specifications: 96" minimum width, access aisle 96" minimum width, and vertical clearance of 98" at the parking space and along one vehicular route to the parking space?	—	—
40.	If the answer to question 39 is "no," does the van-accessible space have an access aisle at least 96" wide as provided by UFAS?	—	—
41.	Are the parking spaces level or with a slope no greater than 1:50, as required by ADAAG/UFAS?	—	—
42.	Are the accessible spaces designated by the International Symbol of Accessibility, placed so that it cannot be obscured by a parked vehicle, as required by ADAAG/UFAS and ANSI?	—	—
43.	Are non-accessible parking spaces marked with signage designating them as van-accessible? (See ADAAG Section 4.6.4.)	—	—
44.	Does the signage on all accessible spaces indicate the fines, if any, for violating state laws or campus rules on use of accessible parking? [This is not required by ADAAG. It may be required under state law and is recommended to deter violations.]	—	—
45.	Is there signage at accessible spaces directing individuals to an accessible route, to the nearest accessible entrance, or to the location of information about campus access? [This is not an ADAAG/UFAS requirement, but a recommendation.]	—	—

Passenger Loading Zones

		Yes	No
46.	Does the building provide accessible passenger loading zones? (If not, skip to the analysis section.)	—	—

		Yes	No
47.	Is there an accessible route from the entrance of the building to the passenger loading zone as required by ADAAG/UFAS?	—	—
48.	Is the passenger loading zone at least 60" wide and 20' long and positioned parallel to the vehicle pull-up space, as required by ADAAG/UFAS?	—	—
49.	Are the vehicle standing spaces and access aisles in the passenger loading zone level, or is the surface slope in that area less than 1:50 in any direction, as required by ADAAG/UFAS?	—	—
50.	If the answer to question 49 is "no," is the slope in the passenger loading zone low enough to permit persons waiting in the areas to move through the zone and remain stationary without great effort?	—	—
51.	Are accessible passenger loading zones designated by the International Symbol of Accessibility? (Evaluate whether the sign complies with the applicable requirements in the signage section, and rate the compliance of the sign with those requirements.)	—	—
52.	Are there curbs between the access aisle and the vehicle pull-up space?	—	—
	(a) If there are curb ramps, do those curb ramps meet the ADAAG criteria in the curb ramp section?	—	—

(b) If the curb ramps do not comply with ADAAG, rate their accessibility.

1 2 3 4 5

Summary/Analysis of Parking Areas and Loading Zones

53. Describe any non-compliance of the accessible parking spaces with ADAAG/UFAS and relevant ANSI specifications.

____

____

____

54. Rate the overall compliance of accessible parking space(s) in the lot.

Accessible spaces

0 1 2 3 4 5

Yes No

Van-accessible spaces

0 1 2 3 4 5

55. Describe any non-compliant elements found in the passenger loading zones.

____

____

____

56. Rate the overall compliance of the passenger loading zone in terms of level of program access that it affords to the building.

0 1 2 3 4 5

57. Based on the answers to questions 28-56, analyze the level of program accessibility that this parking lot affords for the building that it serves or is near.

0 1 2 3 4 5

Entrances

58. Identify all entrances into the facility. What is the total number of entrances?____________________________

59. How many entrances are designated on the blueprints, designs, or through signage as "accessible?" ____________________

60. Do each of the designated "accessible" entrances meet the specifications for accessible entrances? (See questions 71-86) __ __
[If the answer is no, identify variances in the summary/analysis section below.]

61. Are there other entrances that meet the specifications of an accessible entrance that are not marked on plans or signs? __ __

    (a) If so, indicate all "accessible" entrances on campus map, or note here:

    ____

    ____

    ____

62. Does at least one accessible route connect at least one accessible entrance to exterior and interior spaces of the building? __ __

		Yes	No
63.	Are 50 percent of all public entrances to the building accessible, as specified by ADAAG?	___	___
64.	Is the number of accessible entrances equivalent to the number of exits required by the applicable fire codes, as specified by ADAAG?	___	___
65.	If the answer to question 63 or 64 is "no," is at least one principal entrance at each grade floor level of the building accessible, as specified by UFAS?	___	___
66.	If the answer to question 64 is "no," are all or almost all exits accessible, as specified by UFAS?	___	___
67.	If all entrances are not accessible, are the accessible entrances identified by the International Symbol of Accessibility, as required by ADAAG/UFAS?	___	___
68.	Do all inaccessible entrances have signage that complies with the requirements in the signage section, indicating the location and route to the nearest accessible entrance?	___	___
69.	If the only entrance to a building or facility is a service entrance, is that entrance accessible?	___	___
70.	If direct pedestrian access to the building is provided from an enclosed parking garage, elevated walkway, or pedestrian tunnel, is at least one entrance from each of these ways accessible?	___	___

Specifications for Accessible Entrances

Use the following specifications to determine if an entrance is "accessible."

		Yes	No
71.	Is the entrance along an "accessible route?"	___	___
72.	If there are stairs leading to the entrance or other changes in level greater than ½", is there a curb ramp, ramp, elevator, or platform lift? (See ADAAG Section 4.3.8.)	___	___
73.	If there is a ramp leading to the entrance, does it meet the specifications for ramps? (See questions 75-81 and ADAAG Section 4.8.)	___	___
74.	Does the accessible entrance have at least one accessible door that meets the requirements in questions 82-86?	___	___

Yes No

Specifications for Ramps Along Exterior Accessible Routes

[Note: A slope greater than 1:20 along an accessible route is considered, under ADAAG, a "ramp." The same definition is used for exterior and interior ramps that are an alternative to stairs.]

75. Does the slope of the ramp meet the following schedule: 1:12 with maximum rise 30"; 1:10-1:12 with maximum rise 6"; 1:8-1:10 with maximum rise 3"; and no slope greater than 1:8? ___ ___

76. Is the ramp cross-slope not greater than 1:50? ___ ___

77. Is the clear width of the ramp at least 36"? ___ ___

78. Do landings at the bottom and top of each ramp and ramp run meet the requirements of ADAAG Section 4.8.4, UFAS, or ANSI? ___ ___

79. If the ramp does not meet the specifications in questions 75-78, is the ramp constructed in a manner that would permit a wheelchair user to move up the ramp? ___ ___

80. Is the ramp equipped with a handrail mounted on both sides of ramp segments between 34"-38" above the ground, with rounded ends and an uninterrupted gripping surface, and does it appear to be structurally stable? [See also ADAAG Section 4.8.5.] ___ ___

81. Is the ramp surface stable, firm, and slip-resistant? ___ ___

Specifications for Accessible Doors at Accessible Entrances

82. Does the accessible door meet the following ADAAG criteria:

    (a) Doorways have a minimum clearance opening of 32" when the door is open 90 degrees (as measured between the face of the door and the opposite stoop) (also required by UFAS and ANSI) ___ ___

    (b) The maneuvering clearances at doors that are not power-assisted or automatic comply with 4.13.6 of ADAAG (also required by UFAS and ANSI) ___ ___

    (c) The floor area within the required clearance is level and clear (also required by UFAS and ANSI) ___ ___

	Yes	No
(d) The threshold at the doorway is no more than 3/4" for exterior sliding doors and ½" for other doors (also required by UFAS and ANSI)	___	___
(e) Raised thresholds at accessible doorways are beveled with a slope no greater than 1:2 (also required by UFAS and ANSI)	___	___
(f) The handles, pulls, latches, locks, and other opening devices on accessible doors have a shape that is easy to grasp with one hand and do not require tight grasping, tight pinching, or twisting of the wrist to operate (also required by UFAS and ANSI), and operating hardware is not mounted higher than 48" above the floor (also required by UFAS)	___	___
83. Where entrances have revolving doors or turnstiles along an accessible route, is an accessible gate or door provided adjacent to the turnstile or revolving door as required by ADAAG/UFAS?	___	___
84. If two hinged or pivoted doors are provided in a series, is the space between them at least 48" plus the width of any door swinging in the space as required by ADAAG/UFAS and ANSI?	___	___
85. Where the doors have closers, does the door take at least three seconds to move from open to closed as required by ADAAG/UFAS and ANSI?	___	___
86. For automatic or power-assisted doors, does it take at least three seconds for the door to check back, and is no more than 15 pounds of force required to stop door movement as required by ADAAG/UFAS and ANSI?	___	___

Summary/Analysis

87. Describe any non-compliance found at any accessible entrance (i.e., entrances designated on plans or signs as accessible.)

____

____

____

88. Rate the overall accessibility of each entrance designated on plans or signs as accessible.

Location ____________ 0 1 2 3 4 5

Location ____________ 0 1 2 3 4 5

Location ____________ 0 1 2 3 4 5

89. Describe any other significant non-compliant items at entrances.

____

____

____

90. If there are no entrances that are marked as accessible on plans or signs, identify on a building map the entrance(s) that most closely meet the criteria for accessibility. For those entrances only, rate the degree of accessibility for route and entrances.

Location ____________________________________

Route/ramps 0 1 2 3 4 5

Entrances 0 1 2 3 4 5

Location ____________________________________

Route/ramps 0 1 2 3 4 5

Entrances 0 1 2 3 4 5

91. Rate the overall accessibility of entrances to this facility in terms of the barrier they pose to entry into the facility based upon the answers to questions 58-90.

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

General Interior Areas

Accessible Route

Each accessible space and area connecting those spaces within the interior of the building should be evaluated for compliance with the standards in this section. The accessible route may include elements and components that are required to comply with the standards for ramps, doors, areas of rescue assistance, space allowance and reach ranges, alarms, elevators, and signage. Those standards are addressed in the sections that follow. The accessibility of each accessible route should be evaluated according to compliance with the

Yes No

ADAAG/UFAS standard by its components and elements.

92. Does at least one accessible route connect the accessible entrances with all accessible spaces and elements within the building? ___ ___

(a) If the answer to question 92 is "yes," mark the accessible route on the blueprint or designs of the building and answer questions 93-124 regarding the accessibility of the route.

(b) If the answer to question 92 is "no," choose a path from accessible entrances through the building to all accessible spaces, mark it on the building blueprint or designs, and evaluate it according to questions 93-124.

93. Is the width of the accessible route at least 36" as required by ADAAG/UFAS and ANSI? ___ ___

94. Where there are obstructions along the accessible route that a wheelchair user must make a turn around, is the minimum clear width consistent with the following specifications, required by ADAAG/UFAS and ANSI:

(a) For a 90 degree turn around a wall or obstruction that is at least 48" wide, the route remains at least 36" wide ___ ___

(b) For a turn around a wall or obstruction that is less than 48" wide, the route is at least 42" wide on the approach to the turn, and at least 48" wide for the width of the obstruction ___ ___

95. Does the accessible route have passing spaces of at least 60" x 60" at least every 200' as required by ADAAG/UFAS and ANSI? ___ ___

96. Is the surface of the accessible route stable, firm, and slip-resistant as required by ADAAG/UFAS and ANSI? ___ ___

97. If the route is carpeted, is the carpet pile ½" at its highest, with exposed edges trimmed ½" or less as required by ADAAG/UFAS and ANSI? ___ ___

98. Is the accessible route free of protruding objects (i.e., do objects mounted on walls between 27"-80" protrude only 4" at the most into corridors or aisles); are cane detection barriers provided where vertical clearance of a space adjoining the route is less than 80" high as required by ADAAG/UFAS and ANSI? ___ ___

99. If the running slope along the accessible route exceeds 1:20, is there an accessible ramp as required by ADAAG/UFAS and ANSI? ___ ___

Yes No

100. If there are changes in levels that exceed ½" (e.g., one or more stairs or changes in grade of slope), are the levels joined by an accessible ramp and/or platform lift? [For the specifications of ramps, see questions 75-81, for platform lifts, see questions 121-124.] ___ ___

Elevators

101. How many floors/levels are there in this building? ________________

102. If there are two or more levels or floors, is there an elevator that serves each level/floor? ___ ___

103. If there is no passenger elevator, is there a service elevator, lift, or some other accessible route to each level? ___ ___

104. If the answer to question 100 or questions 102 and 103 is "no," identify all floors/levels or areas that cannot be reached by an accessible route (e.g., floors 2-4, basements, mezzanines, weight rooms).

____

____

____

105. List all programs that use the levels or spaces identified in question 104.

____

____

____

106. If there is an elevator that serves one or more areas, does it meet the specifications for an accessible elevator? ___ ___

Specifications for Elevators

[ADAAG/UFAS and ANSI standards for elevators follow in questions 107-120.]

107. If the building has an elevator, is it automatic, self-leveling, and does it land within ½" of the floor? ___ ___

108. Does a visible and audible signal occur at each hoistway entrance indicating that a car is answering a call (audible signals can sound once for "up" and twice for "down")? ___ ___

109. Are hall lantern fixtures at each hoistway entrance at least 2½" tall and mounted at least 72" above the lobby floor? ___ ___

110. Are hall call buttons at the elevator centered 42" above the floor and at

Yes No

least ¾ " in diameter, with the "up" button above the "down" button? ___ ___

111. Are hall call buttons raised or flush, as required by ADAAG/UFAS? ___ ___

112. Are floor designations provided on both jambs, with characters centered 60" above the floor? ___ ___

113. Are floor designations in raised and braille letters at least 2" high as required by ADAAG? ___ ___

114. If the characters in question 113 are not braille, are they raised, as required by UFAS? ___ ___

115. Do the doors open and close automatically and have a reopening device if obstructed? ___ ___

116. Do the elevator doors remain open in response to a car call for at least three seconds? ___ ___

117. Are floor surfaces in the elevator firm, stable, and slip-resistant; if carpet is used, is it securely attached with a firm cushion, pad, or backing, and its pile does not exceed ½"? ___ ___

118. Is an elevator with center opening doors at least 80" wide (68" for cars with side opening doors) and 54" deep from the entrance to the back of the car and 51" from the front to the back of the car? ___ ___

119. Do the control buttons meet either of the following requirements:

ADAAG

(a) Buttons are at least ¾" ___ ___

(b) Buttons are raised or flush ___ ___

(c) Buttons are designated by Grade 2 braille and raised letters or numbers that are between ⅝" and 2" high, uppercase sans serif or simple serif type ___ ___

(d) Raised designations for control buttons are to the immediate left of the button to which they apply ___ ___

(e) Button for the main entry floor is designated by a raised star at the left of the floor designation ___ ___

Yes No

(f) No button is higher then 54" above the floor for a side approach and 48" for a front approach with emergency controls no higher than 35" above the floor ___ ___

(g) The controls are on the front walls in cars with center opening doors ___ ___

UFAS

All requirements are the same, except the following:

(h) Buttons are designated by only raised letters in sans serif type ___ ___

(i) Button is higher than 48" above the floor ___ ___

ANSI

All requirements are the same as those for UFAS, except:

(j) Buttons are not raised ___ ___

120. Is the car equipped with an emergency two-way communication between the elevator and a point outside the car? ___ ___

Specifications for Platform Lifts

121. Is there a platform lift in the building? ___ ___

122. If the answer to question 121 is "yes," does the area around and on the platform lift comply with the ADAAG requirements for accessible space and reach ranges, and operating mechanisms? (See below and ADAAG) ___ ___

123. Do platform lifts comply with ADAAG 4.2.4 (clear floor space), 4.5 (ground and floor surfaces), and ASME A17.1? ___ ___

124. Are the controls within the reach ranges described in questions 260-267? ___ ___

Summary/Analysis of Interior Accessible Route

125. Describe any non-compliance/barriers found along the major elements of the accessible route and rate the overall accessibility of those elements based upon questions 93-124.

(a) Ramps (based on questions 75-81)

Problems:

Overall accessibility rating:

At location__________ 0 1 2 3 4 5

At location__________ 0 1 2 3 4 5

(b) Elevators (based on questions 107-120)

Problems:

Overall accessibility rating:

At location__________ 0 1 2 3 4 5

At location__________ 0 1 2 3 4 5

(c) Platform lifts (based on questions 121-124)

Problems:

Overall accessibility rating:

At location__________ 0 1 2 3 4 5

At location__________ 0 1 2 3 4 5

(d) Route/slope/surface (based on questions 92-100)

Problems:

			Yes	No
	Overall accessibility rating	0 1 2 3 4 5		
126.	Rate the overall degree of access found along the accessible route(s) in the interior of this building:			
(a)	To main-level spaces	0 1 2 3 4 5		
(b)	To all spaces	0 1 2 3 4 5		

Alarms

		Yes	No
127.	Does the building have an emergency warning system?		
128.	If the answer to question 127 is "yes," do the alarms in the system along the accessible route and in all public spaces (e.g., restrooms, classrooms, theaters) meet the specifications of ADAAG or UFAS?		

Specifications for Accessible Alarms

		Yes	No
129.	Does the audible alarm exceed the prevailing sound level in the building by an amount sufficient for those in the building to hear it?		
130.	Are single-station audible alarms provided in hallways along the accessible route?		
131.	If the answer to question 130 is "yes," does the building also have accessible single-station visual alarms in those areas?		
132.	Does the visual alarm meet the following ADAAG criteria:		
(a)	Lamp is a xenon strobe or equivalent		
(b)	The color is clear or nominal light		
(c)	Maximum pulse duration is 0.2 seconds		
(d)	Intensity is a minimum of 75 candela		
(e)	The flash rate is between 1Hz and 3Hz		
(f)	The appliance is placed 80" above the floor or 6" below the ceiling, whichever is lowest		
(g)	No place in any room or space where an audible alarm is located is more than 50' from the visual signal, except in		

Yes No

large spaces such as auditoriums, where they may be spaced 100' apart or equivalent facilitation has been provided ___ ___

(h) All places in common corridors and hallways that have audible alarms are no more than 50' from the signal or equivalent facilitation has been provided ___ ___

133. If the visual alarms do not meet the ADAAG criteria, do they meet the following UFAS and ANSI requirements:

(a) Electrically powered internally illuminated emergency exit signs flash in conjunction with audible emergency alarms ___ ___

(b) The flashing frequency of visual alarm devices is less than 5 Hz ___ ___

(c) Where visual alarms use electricity from the building as a power source, they are installed on the same system as the audible emergency alarms ___ ___

134. Are visual alarms located no more than 50' from any place in a corridor or common area along the accessible route, as required by ADAAG? ___ ___

(a) If the answer to question 134 is "no," has "equivalent facilitation" been provided for visual alarms (e.g., a fewer number in spaces with higher candela)? ___ ___

Summary/Analysis

135. Describe any non-compliance with ADAAG/UFAS or ANSI requirements for alarms along the accessible route, based on the answers to questions 129-134.

____

____

____

136. Do the alarms meet the requirements of all applicable fire codes? ___ ___

137. If there are no visual alarms, are there operational alternatives for alerting persons with hearing impairments of emergencies?

Yes No Unknown

138. Rate the overall accessibility of the alarms in the building.

0 1 2 3 4 5

Yes No

Areas of Rescue Assistance

139. Along the accessible route, are there "areas of rescue assistance" that meet the specifications below where persons with disabilities may go to await help in the event of an emergency? ___ ___

Specifications for Areas of Rescue Assistance

[ADAAG provides that an area of rescue assistance can be one of the following: (1) stairway landing within a smokeproof enclosure; (2) exterior exit balcony located adjacent to an exit stairway; (3) one-hour fire-resistant corridor located adjacent to an exit enclosure; (4) vestibule adjacent to exit; (5) stairway landing within an exit enclosure that is vented to the exterior and separated from the interior of the building with not less than one-hour fire-resistive doors; (6) areas or room separated by a smoke barrier; or (7) elevator lobby when elevator shafts and adjacent lobbies are pressurized.]

140. Does each area of rescue assistance have two accessible spaces not less than 30" x 48" each? ___ ___

141. Do the areas of rescue assistance have two-way communication systems with both visible and audible signals between the rescue area and the primary entrances? ___ ___

142. Is each area of rescue assistance identified by an illuminated sign, and is an International Symbol of Accessibility providing directions to the areas installed at all inaccessible exits? (See the questions in the section on signage to determine whether the sign meets those requirements.) ___ ___

Evacuation Procedures

143. If there is no area of rescue assistance or if the area of rescue assistance in the building does not comply with the specifications in questions 140-142, is there an accessible route to a stairwell or other area protected by a fire door? ___ ___

144. If there are no designated "areas of rescue assistance" that meet all the specifications of the ADAAG:

    (a) Do the emergency routes and exits meet all applicable fire codes? ___ ___

    (b) Are there areas on each floor of multi-story buildings that meet the general definition even if they are not large enough for multiple chairs or lack two-way communication? ___ ___

Yes No

145. Do all accessible routes that serve an accessible space, but do not serve as an accessible means of egress, connect to an accessible place of refuge that complies with local fire codes as required by UFAS and ANSI? ___ ___

146. If the building does not have any type of area of rescue assistance, do the accessible routes serving accessible spaces in the building provide an accessible means of egress in emergencies? ___ ___

147. Has a fire evacuation policy been developed that designates areas of emergency assistance for persons with disabilities in the building? ___ ___

Summary/Analysis

148. Describe any non-compliant components in the areas of rescue assistance along the accessible route, based on the answers to questions 140-147.

____

____

____

149. Rate the accessibility of the areas of rescue assistance along the accessible route.

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

150. Rate the overall degree of accessibility of emergency evacuation procedures/areas in the facility.

0 1 2 3 4 5

Stairs

151. Do the stairs in the building have uniform riser heights and tread widths, with no tread less than 11" and no open risers as specified by ADAAG/UFAS? ___ ___

152. ANSI allows open risers, but requires compliance with the other specifications in question 151. Do the stairs comply with all of the provisions in question 151, except the requirement that the risers not be open? ___ ___

153. Are handrails provided on both sides of stairs as required by ADAAG/UFAS and ANSI? ___ ___

	Yes	No
154. Does the handrail have an uninterrupted gripping surface and appear structurally stable as specified by ADAAG/UFAS?	___	___
155. Is the handrail mounted between 34"-38" (ADAAG) above the stair nosing, or between 30"-34" above the stair nosing (UFAS)?	___	___
156. Is the handrail mounted so that is does not rotate in its fittings as required by ADAAG/UFAS?	___	___

Summary/Analysis

157. Based on the answers to questions 151-156, describe any non-compliant components found in stairs in the building.

____

____

____

158. Rate the overall degree of accessibility of the stairs.

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

Signage

	Yes	No
159. Are there signs that identify permanent rooms and spaces (e.g., restrooms, classrooms, offices)?	___	___
160. If the answer to question 159 is "yes," does this signage comply with the specifications for signage?	___	___

161. If the signs on permanent spaces do not meet the specifications in questions 162-166, are there alternative procedures for providing directions and information to persons unable to see signs because of visual impairments (e.g., orientation, training guides, or assistants)?

Yes No Unknown

(a) If so, describe these procedures or attach copies.

____

____

____

Yes No

Specifications for Signage

162. Does all permanent signage meet the specifications of the ADAAG? ___ ___

(a) Characters are raised ${}^{1}/_{32}$" ___ ___

(b) Letters are ${}^{5}/_{8}$"-2"; upper-case in sans serif or simple serif ___ ___

(c) Grade 2 braille characters ___ ___

163. If signs do not have braille characters, do they meet the first three specifications as required by UFAS? ___ ___

164. Is the sign located on the latch side of the door, or if there is no space on that side, on an adjacent wall as required by ADAAG/UFAS? ___ ___

165. Are signs mounted 60" from their centerline to the floor, in a location that can be approached to within 3" before encountering protruding objects or standing with the swing of the door as required by ADAAG/UFAS? ___ ___

166. Do signs comply with the following ADAAG/UFAS specifications:

(a) Letters and numbers have a width-to-height ration from 3:5-1:1 ___ ___

(b) Letters and numbers have a stroke-width-to-height ration from 1:5-1:10 ___ ___

(c) The sign has a non-glare finish with a contrasting background ___ ___

167. If the sign is suspended or projected, does it comply with the following ADAAG specifications:

(a) Are the characters at least 3" high? ___ ___

(b) Are signs suspended no less than 80" above the floor? ___ ___

(c) Are signs mounted on posts or pylons no higher than 27" off the floor? ___ ___

(d) If signs are mounted on walls between 27"-80", do they project no more than 4" from the wall? ___ ___

Yes No

Summary/Analysis

168. Describe all non-compliant signs, based on the answers to questions 159-167.

____

____

169. Rate the overall accessibility of existing signage based upon new construction standards.

0 1 2 3 4 5

170. Rate the overall accessibility of information provided by signage, taking into account operational alternatives.

0 1 2 3 4 5

Bathrooms

[Note: The new construction standards of ADAAG/UFAS have requirements specifying the number of bathrooms in each facility that must be accessible. Program access may or may not require accessible bathrooms in each facility, but at least one set of accessible bathrooms or a unisex accessible bathroom in each facility is encouraged by the authors. To determine whether an existing bathroom is accessible, the following questions examine the accessibility of the elements that are typically part of an accessible bathroom. If a particular element does not comply, indicate how far that element is from compliance, and rate the non-complying element in terms of accessibility.]

171. Are any of the bathrooms that serve accessible spaces in the building identified as accessible? ___ ___

(a) If the answer to question 171 is "yes," how many bathrooms in the building are designed as accessible?

____

172. Is there at least one bathroom for each sex or one unisex bathroom that meets the specifications below and in ADAAG/UFAS or ANSI, and that can be reached from the accessible route? ___ ___

173. If there is no bathroom or restroom that meets all of the specifications of ADAAG/UFAS or ANSI for elements and scoping, is there at least one bathroom for each sex that:

(a) Can be reached from the accessible route ___ ___

Yes No

(b) Has an accessible entrance (i.e., an accessible door of appropriate width) (See question 82) ___ ___

(c) Has at least one wheelchair-accessible toilet stall ___ ___

(d) Has at least one sink that is functionally accessible ___ ___

174. If the answer to question 173 is "yes," identify the location of all such "functionally accessible" bathrooms.

____

____

175. Are accessible bathrooms located on an accessible route from each accessible space? ___ ___

176. Do the bathrooms that are not accessible have signage directing individuals to accessible bathrooms? ___ ___

177. Based on the answers to questions 173-176 and to the following questions regarding the accessibility of components of the accessible bathrooms, rate the overall accessibility that the bathrooms in the building afford to programs in the building.

0 1 2 3 4 5

Specifications for ADAAG/UFAS/ANSI Accessible Bathrooms

178. Are accessible toilets mounted between 17"-19" from the floor to the top of the seat? ___ ___

179. Are the flush valve controls on accessible toilets mounted at a maximum height of 44" above the floor? ___ ___

180. Do the operating controls comply with the requirements in the controls section? ___ ___

181. Are the toilet paper dispensers for accessible toilets mounted at least 19" from the floor and at most 36" from the rear wall? ___ ___

182. Is there at least one accessible urinal, whether floor-mounted or wall-hung, no more than 17" above the floor? ___ ___

183. Is there an area 30" x 48" in front of the accessible urinals for forward approach as required by ADAAG/UFAS/ANSI? ___ ___

		Yes	No
184.	Do the valve controls comply with the requirements in the "controls" section?	—	—
185.	Are the "accessible" sinks in accessible bathrooms mounted no more than 34" above the floor, extend at least 17" from the wall, and have at least 29" of clearance from the floor to the bottom of the apron as required by ADAAG/UFAS?	—	—
186.	If the sink is mounted more than 34" above the floor, does it comply with the other specifications in question 185 as required by ANSI?	—	—
187.	Does a minimum knee clearance of 27" extend for at least 8" under the accessible lavatory as required by ADAAG/UFAS/ANSI?	—	—
188.	Is there clear floor space of 30" x 48" (with up to 19" under the sink) available to allow forward approach to accessible lavatories as required by ADAAG/UFAS/ANSI?	—	—
189.	Are the sink controls on accessible sinks lever-operated, push-type, touch-type, or electronically controlled as required by ADAAG/UFAS/ANSI?	—	—
190.	Can the controls on accessible sinks be operated with one hand and no wrist turning as required by ADAAG/UFAS/ANSI?	—	—
191.	If toilet stalls are provided, then is at least one a "standard" stall as required by ADAAG/UFAS/ANSI?	—	—
192.	If the answer to question 191 is "no," does the bathroom have at least one "alternate" stall design as provided by ADAAG/UFAS?	—	—
193.	If six or more toilet stalls are provided, then is there at least one "standard" stall and one "alternate" stall as required by ADAAG?	—	—
194.	Do any of the toilet stalls meet the following specifications for "standard" stalls as required by ADAAG/UFAS/ANSI:		
	(a) At least 60" wide	—	—
	(b) At least 59" deep with a floor-mounted toilet or at least 56" deep with a wall-mounted toilet	—	—
195.	Do any of the toilet stalls meet the following specifications for "alternate" stalls:		

Yes No

(a) At least 36" wide ___ ___

(b) At least 69" deep with a floor-mounted toilet or at least 66" deep with a wall-mounted toilet ___ ___

196. Is there at least 48" clearance between the door side of any accessible stall and any obstruction when approached from the front or from the hinge side of the stall, and at least 42" when approached from the latch side of the stall door as required by ADAAG/UFAS? ___ ___

197. Are all the accessible bathrooms identified by the International Symbol of Accessibility as required by ADAAG/UFAS? ___ ___

198. Does the signage at each accessible bathroom comply with the requirements in the section on accessible signage? ___ ___

199. If none of the stalls in a bathroom are accessible, or if other non-complying elements in the bathroom make it inaccessible, is there another bathroom, one for each sex or one unisex, on the same floor that has either a "standard" or an "alternate" stall and other complying elements? ___ ___

200. If the answer to question 199 is "no," is there at least one bathroom with an accessible stall, toilet, and sink in the facility and located along an accessible route? ___ ___

Summary/Analysis

201. For each bathroom, describe any "accessible" elements that do not comply, rate the degree of compliance of accessibility of each major "accessible" element, and rate the overall degree of access to the bathroom (use additional sheets if necessary).

Bathrooms at (location or number)

(a) Entrance

1. Non-complying items ______________________

2. Rating 0 1 2 3 4 5 N/A

(b) Accessible toilets (questions 178-181)

1. Non-complying elements ______________________

2. Rating 0 1 2 3 4 5 N/A

(c) Accessible urinals (questions 182-184)

1. Non-complying elements ________________________

2. Rating 0 1 2 3 4 5 N/A

(d) Accessible sinks/lavatories (questions 185-190)

1. Non-complying elements ________________________

2. Rating 0 1 2 3 4 5 N/A

(e) Accessible toilet stalls (questions 191-196)

1. Non-complying elements ________________________

2. Rating 0 1 2 3 4 5 N/A

(f) Signage

1. Non-complying elements ________________________

2. Rating 0 1 2 3 4 5 N/A

(g) Overall accessibility of the bathroom based upon presence/absence of accessible features and degree of variance:

0 1 2 3 4 5

202. Taken as a whole, is there access to accessible restrooms in this facility? ___ ___

Drinking Fountains

203. Are there drinking fountains in the facility? If the answer is "yes," answer the following questions; if "no," skip to the next section. ___ ___

204. If drinking fountains are provided in the building, do at least 50 percent, but not less than one, of all drinking fountains on a floor meet the specifications for an accessible fountain and are these accessible fountains located on an accessible route as specified by ADAAG/UFAS? ___ ___

205. If the answer to question 204 is "no," is there at least one accessible drinking fountain in the building that is located on an accessible route from all areas where programs are offered? ___ ___

		Yes	No
206.	Is there complying directional signage located at all inaccessible drinking fountains that provides directions to accessible drinking fountains?		
207.	If there is no drinking fountain that meets the specifications for an accessible fountain, has at least one fountain located on an accessible route been modified to make it functionally accessible?		
208.	If the answer to question 207 is "yes," is the drinking fountain accessible to wheelchair users and persons who have difficulties bending or stooping by providing any of the following?		
	(a) A "hi-lo" fountain with spouts for each group		
	(b) An accessible drinking fountain and a water cooler		
	(c) Any other means (i.e., water cups)		

Specifications for Accessible Drinking Fountains

		Yes	No
209.	Are drinking fountains placed in alcoves no more than 24" deep that are at least 30" wide as required by ADAAG/UFAS/ANSI?		
210.	Is the knee clearance under the drinking fountain at least 27" high, 17"-19" deep, and 30" wide as required by ADAAG/UFAS/ANSI?		
211.	Is the height of the spout no more than 36" from the floor as required by ADAAG/UFAS/ANSI?		
212.	Is the spout located at the front of the unit where it directs water flow 4" high in a trajectory nearly parallel to the front of the unit as required by ADAAG/UFAS/ANSI?		
213.	Are the controls mounted near the front edge of the fountain, and do they comply with the specifications in the controls section as required by ADAAG/UFAS?		
214.	If the answer to question 213 is "no," do the controls comply with the specifications in the controls section as required by ANSI?		
215.	Is there clear floor space of 30" x 48" for drinking fountains for forward or side approach as required by ADAAG/UFAS/ANSI?		

Summary/Analysis

216. Based on the answers to questions 209-215, describe any non-compli-

Yes No

ance with the ADAAG/UFAS/ANSI standards by all "accessible" fountains.

____

____

____

217. Rate the compliance of each drinking fountain.

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

218. Rate the level of program accessibility that the drinking fountains afford for the building.

0 1 2 3 4 5

Telephones

219. Are public pay telephones provided in the building? ___ ___

220. Describe the number and location of all pay telephones.

____

____

____

221. Which company is the supplier/vendor of the pay telephones?

____

222. When is the contract scheduled for renewal? (If unknown, identify the appropriate contracting officer.)

____

223. If public telephones are provided in the building, is the number of telephones that meet the specifications for "accessible" telephones consistent with the following ADAAG/UFAS schedule:

(a) For one or more single-unit installations on each floor, is there one accessible telephone per floor? ___ ___

		Yes	No
(b)	For one bank of two or more adjacent telephones, is there one accessible telephone per floor?	___	___
(c)	For two or more banks of two or more adjacent telephones, is there one accessible telephone per bank or accessible unit installed as a single unit in proximity (either visible or with signage) to the bank?	___	___
224.	Are all accessible telephones equipped with a volume control, and are 25 percent or at least one of all other public telephones equipped with a volume control and dispersed throughout the building as required by ADAAG?	___	___
225.	If the answer to question 224 is "no," is at least one accessible public telephone equipped with a volume control as required by UFAS?	___	___
226.	Are volume control telephones identified by a sign containing a depiction of a telephone handset with radiating sound waves, as required by ADAAG?	___	___
227.	Where four or more public pay telephones are provided at a building site (including interior and exterior), is at least one interior public text telephone (TDD) provided, as specified by ADAAG?	___	___
228.	If the answer to question 227 is "no," is at least one public telephone equipped to use a portable text telephone (e.g., with an electrical outlet and a shelf)?	___	___
229.	Are text telephones identified by the international TDD symbol?	___	___
230.	Is directional signage to the nearest text telephone placed adjacent to all banks of telephones without a text telephone as specified by ADAAG?	___	___
231.	If a bank of telephones in the interior of the building has three or more public pay telephones, is at least one public pay phone equipped with an accessible shelf and outlet for text telephones?	___	___

Specifications for Accessible Telephones

		Yes	No
232.	Is there a clear floor space at least 30" x 48" that allows either a forward or parallel approach by a wheelchair user as required by ADAAG/UFAS/ANSI?	___	___
233.	Are the approaches to the accessible telephone free of bases, enclosures, and fixed seats that would impede a wheelchair user?	___	___

Yes No

234. If accessible telephones are mounted with leading edges between 27"-80" above the finished floor, do they protrude no more than 4" into hallways, corridors, or passageways, as required by ADAAG/UFAS? ___ ___

(a) Telephones mounted below 27" above the floor may protrude any amount

(b) Free-standing telephones mounted on posts or pylons may overhang 12" at the most between 27"-80" above the floor

235. Are the accessible telephones hearing aid-compatible, as required by ADAAG? ___ ___

236. If the answer to question 235 is "no," are the accessible telephones equipped with a receiver that generates a magnetic field in the area of the receiver cap, as required by UFAS/ANSI? ___ ___

237. If a text telephone is provided, is it permanently affixed with or adjacent to the telephone enclosure (as required by ADAAG), and is the cord sufficiently long to allow connection of the text telephone and the telephone receiver? ___ ___

238. Where pay telephones are designed to accommodate a portable text telephone, is there a shelf that provides at least 6" of vertical clearance in the area where the text telephone is placed and an electrical outlet within or adjacent to the telephone enclosure, as required by ADAAG? ___ ___

Summary/Analysis

239. Describe any non-compliance with the ADAAG, UFAS, or ANSI specifications, and rate the overall accessibility of telephones in the building by type of barrier:

(a) Wheelchair-accessible telephones

1. Non-complying elements ____________________

2. Overall rating 0 1 2 3 4 5

(b) Hearing aid-compatible telephones

1. Non-complying elements ____________________

2. Overall rating 0 1 2 3 4 5

Yes No

(c) Volume-controlled/amplified telephones

1. Non-complying elements ________________

2. Overall rating 0 1 2 3 4 5

(d) Text telephones and/or useability with portable text telephones

1. Non-complying elements ________________

2. Overall rating 0 1 2 3 4 5

Rooms

240. How many rooms/spaces in the facility are accessible to and useable by persons with disabilities? ________________

241. Are all rooms that are considered accessible to and useable by persons with disabilities located on an accessible route from the entrance of the building to the room? (Rooms/spaces that are not along an accessible route are not accessible and should be noted.) ___ ___

242. Each room/space along an accessible route that is or may be accessible should be analyzed and rated on the following factors:

(a) Doorways. Does the room/space have an accessible entrance? (See questions 82-86) ___ ___

(b) Signage. Does the room/space have appropriate signage? (See questions 159-170) ___ ___

(c) Space Allowances for Wheelchairs. Is there space for wheelchair users to enter, approach, and use accessible seating? ___ ___

(d) Fixed Seating and Tables. Is there fixed seating, and if so, is an appropriate portion of the fixed seating accessible? (See questions 249-254) ___ ___

(e) Alarms. Are there appropriate visual and audible alarms? (See questions 127-138) ___ ___

(f) Protruding Objects. If there are interior accessible routes leading to seating, are there protruding objects that may be ___ ___

Yes No

a danger to persons with vision impairments? (See questions 258-259) ___ ___

(g) Controls/Mechanisms. If there are controls/mechanisms, do these meet the accessibility criteria? (See questions 260-261) ___ ___

(h) Counters/Reach Ranges. If there are objects (e.g., counters, laboratory equipment) that must be reached, are they accessible with appropriate clear floor space? (See questions 262-267) ___ ___

(i) Special Use Areas. If this space is a special-use area, have those specifications been reviewed? (See questions 269-290) ___ ___

Specifications for Doorways

243. If the room has a single doorway/entrance, does the doorway permit a minimum clear opening of 32" when the door is open 90 degrees, as required by ADAAG/UFAS/ANSI? ___ ___

244. If the answer to question 243 is "no," does the width of the doorway permit a wheelchair to pass through, and does a wheelchair user have sufficient room to maneuver after entering the room? ___ ___

245. If there are multiple doorways/entrances to the room or space:

(a) Does at least one doorway/entrance meet the requirements of questions 243 or 244? ___ ___

(b) Is there appropriate signage at inaccessible doorways/ entrances designating the accessible entrance? ___ ___

Specifications for Signage

246. Do signs that designate permanent rooms comply with the requirements for signage in questions 162-167? ___ ___

Specifications for Space Allowances

247. Is every interior accessible route leading to wheelchair-accessible seating at least 32" wide at a point and 36" continuously? ___ ___

248. Is there sufficient wheelchair turning space of 60" in diameter or T-shaped to approach, enter, and exit the areas of accessible seating or fixed equipment or tables? (See ADAAG Section 4.2.) ___ ___

Yes No

Specifications for Fixed Seating and Tables

249. If the seating in the room is fixed, are at least 5 percent, but not less than one arrangement of the fixed seating arrangements accessible, as required by ADAAG/UFAS/ANSI? ___ ___

250. If the answer to question 249 is "no," how many of the fixed seats are accessible?

____

251. Does an accessible route lead to and through such fixed seating, as required by ADAAG/UFAS/ANSI? ___ ___

252. Is there at least clear floor space of 30" x 48" in front of the fixed seating that does not overlap with knee space by more than 19", as required by ADAAG/UFAS/ANSI? ___ ___

253. Are knee clearances at least 27" high, 30" wide, and 19" deep provided under the counters, tables, or desks with fixed seating, as required by ADAAG/UFAS/ANSI? ___ ___

254. Are the tops of accessible tables, counters, and desks with fixed seating between 28" and 34" above the floor? ___ ___

Specifications for Alarms

255. Is there a visual alarm in the room that is no more than 50' from any place in the room, or equivalent facilitation, as required by ADAAG? ___ ___

256. If the room is more than 100' across, without obstructions 6' above the floor, are the visual alarm signals placed around the perimeter of the room, with at most 100' between them, or equivalent facilitation? ___ ___

257. Do the alarms meet the specifications in questions 129-134? ___ ___

Specifications on Protruding Objects

258. Is there at least 80" of clear head room leading to all seating or use areas? ___ ___

    (a) If vertical clearance is less than 80" at any point, is there a barrier to warn blind or visually impaired persons? ___ ___

259. Are there any "protruding" objects along interior accessible routes/ aisles leading to seating or work areas (i.e., with leading edges between

Yes No

27" and 80" above the floor that protrude more than 4")? ___ ___

Specifications for Controls and Operating Mechanisms (standards in this section apply to all equipment in the building, except for electrical outlets and communication systems)

260. Can controls be operated without tight grasping, pinching, or wrist twisting, and with no more than five pounds of force as required by ADAAG/UFAS and ANSI? ___ ___

261. Are electrical outlets and communications systems mounted no lower than 15" as required by ADAAG/UFAS and ANSI? ___ ___

Specifications for Clear Floor Space and Reach Ranges

262. Is there a minimum clear floor or ground space at least 30" x 48" positioned forward or parallel to an object? ___ ___

263. Where the clear floor space around an object, such as a shelf or counter, permits only forward approach, is the object positioned between 15"-48" high (only ADAAG/UFAS require the 15" minimum low reach)? ___ ___

264. Where the clear floor space around an object, such as a shelf or counter, permits only forward approach and the depth of the object is between 20"-25", is it positioned no higher than 44"? ___ ___

265. For objects that require a forward approach and whose depth is less than 20", is the object positioned no higher than 48"? ___ ___

266. Where objects must be approached only from the side, is the height of the object no more than 54" and no less than 9" from the floor? ___ ___

267. Where objects must be approached from the side and must be reached over, is the object between 0"-24" deep and no higher than 34" high? ___ ___

Summary/Analysis

268. For each room in the building that must be or is designated accessible, describe any non-complying items and rate the degree of accessibility or barriers for each of the elements, if applicable.

   (a) Doorways

      1. Non-complying elements ____________________

2. Rating 0 1 2 3 4 5

[Note: If there is at least one marked accessible entrance, there is no barrier.]

(b) Signage

1. Non-complying elements ______________

2. Rating 0 1 2 3 4 5

[Note: As stated above, operational alternatives may make information or signage accessible.]

(c) Space allowances for wheelchairs

1. Non-complying elements ______________

2. Rating 0 1 2 3 4 5

(d) Fixed seating and tables

1. Non-complying elements ______________

2. Rating 0 1 2 3 4 5

(e) Alarms

1. Non-complying elements ______________

2. Rating 0 1 2 3 4 5

[Note: As stated above, operational alternatives may make emergency alarms accessible.]

(f) Protruding objects

1. Non-complying elements ______________

2. Rating 0 1 2 3 4 5

[Note: These apply only to objects along access aisles, not to every area of every space.]

(g) Controls and mechanisms

Yes No

1. Non-complying elements ____________________

2. Rating 0 1 2 3 4 5

[Note: This category refers to structural controls, not every piece of equipment. Operational solutions will eliminate most of these barriers.]

(h) Counters/reach ranges

1. Non-complying elements ____________________

2. Rating 0 1 2 3 4 5

[Note: There are no "scoping" provisions on counters, equipment, or fixtures other than fixed tables, even in new construction. The degree to which a space must be accessible will depend upon the type of fixed/built-in facilities and how they are used. For example, in an undergraduate science lab there may be several pieces of identical equipment; at least one is accessible height with appropriate reach ranges. The lab is useable as is. In certain graduate laboratories access is needed to all equipment on all counters. The survey should rate the degree of access, bearing in mind that operational alternatives (e.g., assistants) may be preferable to structural alterations and that there is no violation of the ADA if accommodations can be provided when requested.]

Special-Use Areas

Assembly Areas—auditoriums, theaters, stadiums, lecture halls

269. Do the number of required fixed seating wheelchair-accessible locations comply with one of the following specifications: — —

ADAAG		UFAS	
Capacity of Seating	# of Wheelchair Locations	Capacity of Seating	# of Locations
4-25	1	50-75	3
26-50	2	76-100	4
51-300	3	101-150	5
301-500	4	151-200	6
Over 500	6	201-300	7
	6, + 1 additional space for each total seating capacity increase of 100	301-400	8
		401-500	9
		501-1,000	2% of total
		Over 1,000	20, + 1 for each 100 over 1,000

		Yes	No
270.	Is 1 percent, but not less than one, of all fixed accessible seats an accessible aisle seat with no armrest on the aisle side, or removable or folding armrests on the aisle side, as required by ADAAG?	___	___
271.	How many seats are wheelchair-accessible? ________________		
272.	Are the accessible seats dispersed in more than one area?	___	___
273.	Are the accessible seats limited to the rear of the assembly area?	___	___
274.	Is each accessible seat identified by a sign or marker, and is accessible signage notifying patrons of the availability of such seat posted, as required by ADAAG?	___	___
275.	Does the assembly area have a built-in public address amplification or audio system?	___	___
276.	If the answer to question 275 is "yes," is there a built-in or other assistive listening system?	___	___

277. Based on the answers to questions 269-276, describe any non-compliance with the ADAAG/UFAS/ASNI standards for assembly areas for each room in the building that has such an area.

____

____

278. Rate the overall accessibility of each assembly area:

(a) Wheelchair accessibility/seating

0 1 2 3 4 5

(b) Amplification/assistive listening system

0 1 2 3 4 5

Dorms/Housing Units

[Note: The ADAAG standards may apply to dorms because they can be considered "transient" lodging. However, there is a great deal of overlap between the ADAAG specifications when they are applied to dorms and the regulations that were passed by the Department of Housing and Urban Development (HUD) under the Fair Housing Amendments Act of 1988 (FHAA), which apply to residential facilities. Officials at the DOJ have suggested that in addition to compliance with applicable ADAAG standards for transient hous-

Yes No

ing, institutions should comply with the FHAA's requirement that all rooms be constructed to be "adaptable" [See 24 C.F.R. § 100.205(c)(3) (1992)]. The FHAA regulations became effective on March 13, 1991. They require that all premises within a dormitory have the following adaptable design features:

- An accessible route through the dorm
- Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
- Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall, and shower seat
- Useable kitchens and bathrooms that provide sufficient clear floor space for a wheelchair user to maneuver

279. Are there any dormitory rooms in the building that are designated as or considered to be accessible? ___ ___

(a) How many rooms are accessible to persons who use wheelchairs? ______________________

(b) How many rooms are accessible to persons with hearing impairments?______________________

(c) How many rooms are accessible to persons with vision impairments?______________________

280. For each room that is considered to be "accessible" to wheelchair users, analyze the degree of accessibility in those rooms in accordance with the following ADAAG factors; if there are no such rooms, use survey to identify the most accessible or adaptable rooms along an accessible route and list them here.

____

____

____

(a) Accessible doorways (ADAAG 4.13, 9.2.2(3))

1. Non-complying elements ______________

2. Rating 0 1 2 3 4 5

(b) Sleeping rooms. At least 36" clear width maneuvering space along both sides of head, or 36" between two beds.

1. Non-complying elements ____________________

2. Rating 0 1 2 3 4 5

(c) Fixed/built-in storage. At least one storage unit complying with ADAAG 4.25

1. Non-complying elements ____________________

2. Rating 0 1 2 3 4 5

(d) Interior accessible route to any areas provided (e.g., living area, dining area, at least one sleeping room, bathroom)

1. Non-complying elements ____________________

2. Rating 0 1 2 3 4 5

(e) Kitchens/kitchenettes (if provided). Accessible per ADAAG 9.2.2(7), including front or parallel approach to cabinets, counters, and sinks, countertops and sinks at maximum of 34" height, 50 percent of shelf space in cabinets with accessible reach ranges.

1. Non-complying items ____________________

2. Rating 0 1 2 3 4 5

(f) Controls and mechanisms

1. Non-complying items ____________________

2. Rating 0 1 2 3 4 5

(g) Bathrooms. Comply with specifications for all elements provided, including those not previously addressed [e.g., mirrors (ADAAG Section 4.1), shower stalls, and bathtubs (ADAAG Sections 4.20-21)].

1. Non-complying items ____________________

2. Rating 0 1 2 3 4 5

Yes No

281. For each room that is considered accessible to persons with hearing impairments:

(a) Are there visual alarms that comply with the specifications for alarms? ___ ___

(b) Is there an accessible electrical outlet within 4' of the telephone for portable text telephones? ___ ___

(c) Are there either built-in visual notification devices to alert occupants to incoming telephone calls, door knock, or door bell, or electrical outlets and wiring for such portable devices? ___ ___

282. For all rooms accessible to persons with hearing impairments:

(a) Describe non-complying elements:

____

(b) Rate overall accessibility: 0 1 2 3 4 5

Restaurants/Cafeterias

283. Is there an accessible route from all accessible entrances and interior areas to a restaurant or cafeteria located in the building? ___ ___

284. Are the tables in the restaurant/cafeteria fixed? ___ ___

[For fixed tables, ADAAG requires clear floor space of 48" x 30" (up to 19" of the clear floor space can be knee clearance space) according to ADAAG/UFAS/ANSI.]

For specifications regarding other key elements in restaurants, see Part 5 of the ADAAG/UFAS requirements.

285. Describe any non-compliance with ADAAG/UFAS in the restaurant/cafeteria.

____

____

____

286. Based on the answers to questions 283-285 and the ADAAG/UFAS requirements for restaurants/cafeterias, rate the level of program accessibility that each restaurant/cafeteria affords:

Yes No

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5 at location ____________

Libraries

[Specifications for libraries are in Part 8 of ADAAG/UFAS.]

287. Describe any non-compliance with the particular specifications in Part 8 of ADAAG/UFAS.

____

____

____

288. Based on an analysis of institutional libraries and an evaluation according to the criteria in the facilities audit, rate the program accessibility afforded by each library.

0 1 2 3 4 5 at location ____________

0 1 2 3 4 5a at location ____________

Service Counters, Information Counters, Cashiers' Windows, Tellers' Windows

289. For each counter or window:

(a) Is a position of any main counter a minimum of 36" in length and a maximum of 36" in height? ___ ___

(b) Is there an auxiliary counter with a maximum height of 36"?, or ___ ___

(c) Is there equivalent facilitation such as a folding shelf or an adjacent location? ___ ___

290. For each counter, information desk, or window:

a. Describe any non-complying elements:

____

____

b. Rate the degree of accessibility: 0 1 2 3 4 5

CHAPTER 9

SAMPLE TRANSITION PLAN

The following is a sample of one format that can be used for a transition plan for a fictitious community college. It is not the only possible approach; the ADA regulations regarding the content of the transition plan do not specify a format. Some institutions may wish to outline plans on a facility-by-facility basis, by grouping similar problems, or through a timetable of structural renovations. This sample also includes some statements regarding programmatic alternatives to structural renovations, and capital improvements that are not required for current program access but are long-term plans to improve access. It is appropriate to leave these items out of the transition plan. They are included in this sample not as a recommended approach, but to illustrate the analytical process of deciding to require some structural renovations to be in the transition plan and not others.

American Community College
Transition Plan for Structural Renovations
July 26, 1992

Introduction

The following is the Transition Plan developed by American Community College (ACC) under Title II of the Americans with Disabilities Act and the implementing regulations of the U.S. Department of Justice at 28 C.F.R. § 35.151(d)(1). This plan was developed as a result of the self-evaluation conducted by ACC under Title II. The self-evaluation is ongoing and is expected to be completed before January 26, 1993. This Transition Plan may be modified or changed at that time if the self-evaluation reveals additional physical obstacles that limit the accessibility of ACC's programs or activities that cannot be removed except through structural renovations.

Responsible Official

The official responsible for the implementation of this plan is the ADA/504 Compliance Officer, Janet Jones. Ms. Jones will be assisted by the Director of Physical Plant, Frank James. All questions, comments, suggestions, or complaints regarding this Transition Plan or the implementation of this plan should be directed to Ms. Jones at (703) 555-1212, or in writing to Ms. Janet Jones, ADA/504 Coordinator, American Community College, Administration Building, Room 100, American, Virginia 12345.

Public Comment

In accordance with the DOJ regulations under Title II, American Community College will provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the Transition Plan. Several individuals with disabilities and groups representing individuals with disabilities were consulted and provided input while the Transition Plan was being developed. Other interested parties are welcome to participate in this process by submitting comments on this Transition Plan. Copies of this plan are being provided to campus and community groups

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representing individuals with disabilities. A copy of this plan will be available on reserve in the American Community College library, where it may be reviewed during all library hours. Copies will also be available for review in the office of the ADA coordinator. A copy of this Transition Plan will be provided on request at no charge, in accessible formats. Please contact the ADA/504 coordinator for copies of this Transition Plan. Comments will be accepted on this plan until January 26, 1993.

Identification of Physical Obstacles that Limit Program Access and Transition Plan for Achieving Compliance

Overview

American Community College is a relatively young school, founded in 1968. Most of its facilities have been built since 1973. ACC has been aware of and has attempted to follow Section 504 of the Rehabilitation Act of 1973, including its requirements for new construction and alteration. The institution has attempted to follow the requirements of Section 504 even during periods where it did not receive federal funds for specific building projects and where compliance with Section 504 was not necessarily required. There are, however, several facilities on campus that were built prior to 1973, or built after 1973 that were not in compliance with the Uniform Federal Accessibility Standards or any predecessor code governing accessible design.

ACC has, and has utilized, a plan for relocation of programs to accessible facilities where problems in accessibility of one facility have posed barriers to persons with disabilities. Such a relocation plan is permitted under Section 504 and Title II of the ADA. Thus, in a number of situations ACC has not included facilities that have physical obstacles in the transition plan. It was the conclusion of the ACC ADA task force that access to the programs and services in those facilities could be provided through relocation or through providing programs in accessible areas on request.

It is ACC's long-term plan to improve access to all its facilities as part of its Capital Improvements Program. Some of these goals are noted in this plan. The only items included in this transition plan with specific deadlines are those facilities where physical obstacles are a barrier to access and access cannot be provided through operational or programmatic changes.

The physical obstacles identified, the methods that will be used to make the facilities accessible, and the schedule for taking steps necessary to achieve compliance have been grouped together in certain areas:

(1) Exterior accessible routes and parking

(2) Administration/office/employee work areas

(3) Classroom buildings

(4) Laboratories/shops/and special academic settings

(5) Student union

(6) Athletic and physical recreation facilities

(7) Fine and performing arts/lecture hall

(8) General access issues applicable to all facilities

I. EXTERIOR ACCESSIBLE ROUTES AND PARKING

A. Accessible Parking. The number of accessible parking spaces meets the state building code requirements. While this number is less than the number required in new construction under the ADA Accessibility Guidelines, the task force concluded that there was no need to increase the number of accessible parking spaces. Observations by campus police indicate that the supply of accessible parking spaces has always exceeded demand for these spaces. Campus security has been directed to vigorously enforce the rules on use of accessible spaces and to monitor their use. ACC has posted notices on all accessible spaces indicating the fine for violation, even though this is not required by the ADA.

The only physical obstacle identified with accessible parking was the absence of van-accessible parking. The institution is not aware of any student, employee, or visitor who has been unable to utilize programs and services because of the absence of van-accessible parking. However, to remove this potential barrier, ACC will convert one accessible space in each of the three (3) parking lots with accessible parking into a van-accessible space. Additional spaces will be added if the institution receives reports from students, employees, or visitors indicating that there is an insufficient amount of accessible parking.

Deadline: September 26, 1992.

B. Exterior Accessible Routes. All accessible parking spaces are served by access aisles, curb cuts, and curb ramps leading to sidewalks. The survey indicated that curb ramps existed at all curbs. Two of the existing curb ramps were improperly graded or contained cracks. These have already been repaired.

Sidewalks connect all accessible parking spaces and interconnect all facilities; these sidewalks are generally free and clear of obstacles and at least three (3) feet wide. However, because of hilly terrain, the most frequently traveled route between certain facilities is along a sidewalk that exceeds the recommended slope limitations of the ADA Accessibility Guidelines. Two operational solutions will be used. First, a campus map has been developed showing the most accessible route between buildings, even if this is sometimes a longer route. Second, in the event that any student, employee, or visitor notifies the ADA/504 Coordinator that he or she is having difficulty accessing a facility because of the slope of the approach, steps will be taken to relocate programs in that facility to a more accessible location.

C. Entrances. All buildings were found to have at least one (1) accessible entrance, either incorporated during new construction or added as a result of Section 504. An "accessible" entrance in this context means an approach that is either at grade level or some type of ramp has been provided as an alternative to stairs. The task force identified several physical obstacles at various entrances.

1. There are three (3) wooden ramps that were intended as temporary ramps. These will be replaced by permanent concrete ramps.

2. An additional three (3) concrete ramps were constructed without railings. This creates a potential barrier for persons with various types of mobility impairments. Railings will be added to these three (3) ramps.

3. The slope on one (1) existing concrete ramp so far exceeded the slope requirements in new construction that it poses a barrier to access. That ramp will be redesigned and reconstructed to meet ADAAG specifications.

4. There was no signage at any accessible entrance, and no signs at inaccessible entrances directing users to accessible entrances. Appropriate signage has been ordered, and will be placed at all entrances.

Deadline: January 26, 1993.

II. ADMINISTRATION BUILDING, OFFICES, AND EMPLOYEE WORK AREAS

There are three (3) buildings that are primarily used as work areas for employees, faculty, and staff: the Mason Administration Building, the Madison Building (faculty and departmental staff), and the Physical Plant/Maintenance/Housekeeping Facilities. The Administration and Madison Buildings are each three (3) stories without elevators.

Analysis of the employee work stations and work areas in these facilities by the Personnel Department resulted in a conclusion that no structural renovations were necessary for the Transition Plan to provide access to existing employees. Sufficient options exist for accessible space that reasonable accommodations can be handled for future employees on a case-by-case basis through relocation.

A. Restrooms. The restrooms in all three (3) buildings were built in compliance with, or previously remodeled to meet, the ANSI A117.1 standard (1980). The Task Force concluded that the difference between this standard and the ADAAG or UFAS did not present any obstacles to access.

B. Wheelchair Access. There is at least one (1) set of accessible entrances that are at least 36 inches wide on each building. Appropriate signage will mark the accessible entrances (see above). Although there have never been complaints about difficulty opening these doors, the door handles will be changed to match the type of mechanisms required in new construction by the ADAAG. These are on order and will be installed by January 26, 1993. The force needed to open exterior doors is in compliance with state fire codes. Because there is no requirement in the ADAAG on force of exterior doors, no steps will be taken at this time.

There are a sufficient number of accessible spaces on the first floor of each building to provide meeting rooms for persons with mobility impairments unable to climb stairs. Signs will be posted at all accessible entrances directing persons with mobility impairments to an accessible first floor office where they can contact persons that they need to reach on the second and third floors.

C. Counter Heights. All counters, including counters in the cashier's office and registrar's office, exceed the heights for counters in new construction. This will be handled on an interim basis through an operational solution, using clipboards and pens. The counters will be modified with fold-out ledges or an equivalent design.

Deadline: January 26, 1994.

III. CLASSROOM BUILDINGS

There are three (3) buildings primarily used for classrooms, Stuart Hall, Lee Hall, and Custis Hall. Stuart Hall is a new building built in compliance with the Uniform Federal Accessibility Standards. Lee Hall was built in compliance with the ANSI 1986 Accessibility Standards. Custis Hall, the oldest building on campus, was not built in compliance with any access code, and renovations since 1968 have not covered accessibility. Each building is four (4) stories. Lee Hall and Stuart Hall each have elevators that serve every floor; Custis Hall has no elevators.

A. Entrances. All entrances on Stuart Hall and Lee Hall are accessible. The one accessible entrance on Custis Hall is narrow, and it is difficult to maneuver the doorway on the current ramp. Both the ramp and the entrance will be redesigned and modified.

Deadline: February 26, 1993.

B. Restrooms. All restrooms in Stuart Hall and Lee Hall were built in compliance with an accessibility standard. The task force has concluded that differences between these standards and the ADAAG/UFAS do not present a barrier to accessibility. None of the bathrooms in Custis Hall are accessible. The two (2) bathrooms on the first floor will be renovated to be accessible in compliance with the ADAAG.

Deadline: February 26, 1993.

C. Classroom Spaces. There are clear accessible routes and entrances in Stuart Hall and Lee Hall. No barriers were identified. In Custis Hall, the classroom entrances are wide enough to accommodate wheelchairs; the route from the classrooms to accessible restrooms on the first floor is accessible, but the absence of an elevator restricts access to floors two (2) through four (4). The task force has determined that access to classes in those floors of Custis Hall can be provided through relocation of classes to the first floor or to either Stuart Hall or Lee Hall.

IV. LABORATORIES, SHOPS, AND SPECIAL ACADEMIC SETTINGS

A. Access to Spaces. The college has a large number of specially designed classroom areas for various technical, vocational, and professional courses. These are located in the three (3) buildings noted above and in other areas of the campus. The task force determined that all specialty classrooms are located along accessible routes where students, employees, and visitors can approach, enter, and exit these rooms, with one exception. The Radio/Television Lab is currently located up a flight of three (3) stairs from ground level in Custis Hall. It would be difficult to relocate this facility. The existing entrance will either be redesigned, or a new accessible entrance will be constructed.

Deadline: July 26, 1993.

B. Equipment and Fixtures. The task force and the individual departments identified a number of potential barriers in the design and location of specialty equipment in various labs, including the Radio/TV Lab. However, it was determined that this was due to the nature of the equipment, not structural design. No steps will be taken at this time to lower counters or adjust equipment. These will be handled on a case-by-case basis, as students or employees with disabilities wish to work in these special areas.

V. STUDENT UNION

The Patrick Henry Student Union Building, built in 1977, complied with an early ANSI standard. It has not been renovated since that time.

A. Entrances. All accessible entrances meet the requirements for functional access (see above). Signage will be added. Door handles will be changed to comply with ADAAG.

Deadline: January 26, 1993.

B. Restrooms. There are restrooms on all three (3) levels of the Student Union Building. All are minimally accessible. These bathrooms were already slated for renovation as part of the 1994 Capital Improvements Budget. They will be renovated to comply with the ADAAG at that time.

C. Elevators. A single elevator serves all three (3) floors. This elevator, as with all other elevators, will be upgraded. (See below.)

D. Information Desk. The area at the main information desk is scheduled for routine maintenance and repainting in 1993, and a new counter will be installed. At that time the counter will be lowered to the height for new construction under the ADAAG.

Deadline: September 26, 1993.

E. Cafeteria. Most of the cafeteria seating is not fixed, but there are some built-in tables and booths. A percentage of those tables and booths that are built-in will be lowered and marked with the appropriate accessibility symbol.

Deadline: July 26, 1993.

VI. ATHLETIC AND PHYSICAL EDUCATION FACILITIES

The Monroe Athletic/Physical Education Building is a relatively new facility, but it apparently was not built in compliance with UFAS or ANSI. It did comply with the state building code, which had some accessibility components, especially for restrooms.

A. Accessible Routes. There is wheelchair access to all main recreational areas, including the basketball court and locker rooms. The one exception is the weight room, which is accessed only by a flight of twelve (12) stairs, with no other accessible entrance. Access to these facilities will be provided through the addition of a platform lift, subject to approval of local building code authorities.

Deadline: January 26, 1995.

B. Restrooms and Locker Room Facilities. Public restrooms and bathrooms are largely accessible. Shower and locker room facilities do not afford a high degree of accessibility. Modifications will include making certain shower stalls wheelchair accessible and modifying control handles on certain sinks.

Deadline: January 26, 1995.

VII. FINE AND PERFORMING ARTS/LECTURE HALL

ACC has one major lecture hall, which is used for lectures, conferences, films, and fine and performing arts. The Jefferson Auditorium was completed in 1985. It was built in compliance with the ANSI standard then applicable under Section 504.

A. Entrances. All entrances are accessible.

B. Restrooms. All restrooms were accessible at the time they were built; the differences with the current ADAAG/UFAS new construction standards are insignificant.

C. Seating Areas. The auditorium has entrances at the back and front; seats are accessed by flights of stairs. Wheelchair seating has been provided at the back of the auditorium.

ACC will add additional seating for wheelchair users and will reserve seating for other persons with disabilities at the front of the auditorium. This will require removal of several seats, designation of several rows for accessible seating, and the addition of directional signage to the front entrances of the auditorium. The steps along aisles cannot be ramped at slopes consistent with the ADAAG. The institution has determined that it would be an undue financial burden to reconstruct the entire auditorium to scatter additional seating, beyond seating at the front and rear of the auditorium.

Deadline: January 26, 1994.

D. Access to Stage Areas. The stage and backstage areas are currently accessed by a set of six (6) stairs. A new accessible entrance will have to be created for performers, lecturers, or others who have mobility impairments.

Deadline: January 26, 1995.

VII. GENERAL ACCESS ISSUES APPLICABLE TO ALL FACILITIES

A. Elevators. It was determined that all elevators on campus have sufficient space and turning radius to be functionally usable by persons who use wheelchairs. Most of the elevators lack accessible signage for persons who are visually impaired. Elevators will be immediately modified to include braille and raised-letter markings on all elevator control buttons and signage outside the elevator doors indicating the floor.

Deadline: November 26, 1992.

Existing elevators will also be modified to add audible beeps indicating floors.

Deadline: January 26, 1994.

B. Visual Alarms. With the exception of several of the newest buildings built in compliance with UFAS, no buildings on campus contain visual emergency alarms. ACC currently has no employees or students who are deaf and has concluded that operational solutions provide access in public areas. However, ACC recognizes the importance of visual alarms as a safety measure. Although this is not required to be included on the Transition Plan, it will be placed on the Capital Improvements Budget for 1994 when the college's current contract for monitoring alarms is subject to renegotiation.

C. Pay Telephones. All pay telephones are provided under contract with a major telephone company. That contract is up for renewal at the end of 1992. The vendor has been advised that as a condition of future contracts the vendor will be required to lower an appropriate number of pay telephones, install amplified telephones, and make a percentage of telephones usable by persons with TDDs through the addition of an electrical outlet and a shelf for the TDD.

D. Room Signage. ACC currently has a small population of students and employees with significant vision impairments. These students and employees have traditionally been accommodated through orientation. However, ACC recognizes the advantages of signage on appropriate permanent spaces such as restrooms and classrooms. While this signage is not necessary to provide program access and is not part of the Transition Plan, an order for appropriate signage on all buildings will be included in the Capital Improvements Budget for 1993.

E. Areas of Rescue Assistance. All emergency exits meet existing fire codes. Campus security is currently identifying all other areas in each building that can serve as areas of rescue assistance. These areas will then be appropriately signed, and evacuation plans will be developed.

Deadline: January 26, 1993.

F. Drinking Fountains: A number of drinking fountains exceed the heights for new construction. Paper cup dispensers have been installed at all of these fountains.

END

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